ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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SUNDAY, AUGUST 1, 2010

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 10, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **207-209** of this Administrative Register.

Due to the size of the August 2010 Administrative Register of Kentucky, the paper version is stapled into two sections. Section 1 contains pages 207-434 and Section 2 contains pages 435-658 and indexes.

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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, Board, or Major Function	Specific Regulation

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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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.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JULY 15, 2010

STATEMENT OF EMERGENCY
101 KAR 5:015E

Pursuant to House Bill 1 passed during the Ky GA 2010 Extra. Sess., the Secretary of Personnel must promulgate an administrative regulation prior to the furlough of any state employee. The first mandatory furlough date for all state executive branch employees is set for September 3, 2010. Accordingly, pursuant to KRS 13A.190(1)(3), this administrative regulation must be filed as an emergency administrative regulation to meet the deadline as stated in 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g). The decision to implement furloughs was necessary to achieve the savings required by the budget passed by the GA. In the first fiscal year alone, over $24 million dollars in savings will be recognized. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 13, 2010. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
NIKKI JACKSON, Secretary

PERSONNEL CABINET
(New Emergency Administrative Regulation)

101 KAR 5:015E. Furloughs.

RELATES TO: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g)
STATUTORY AUTHORITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g)
EFFECTIVE: July 13, 2010
NECESSITY, FUNCTION, AND CONFORMITY: House Bill 1, passed during the 2010 Kentucky General Assembly Extraordinary Session, requires the Secretary of Personnel to promulgate an administrative regulation establishing procedures for the implementation of furloughs or a temporary reduction of hours of all Executive Branch employees due to a lack of funds as certified by the State Budget Director. This administrative regulation establishes the requirements for implementing the furlough plans.

Section 1. Definitions. (1) "Appointing authority" means "Appointing Authority" as defined in KRS 18A.005(1) and KRS 151B.010(1). In relation to KRS Chapter 16, "Appointing Authority" means the Commissioner of the Department of Kentucky State Police;
(2) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the Appointing Authority within a pay period;
(3) "Lack of funds" means a current or projected deficiency of funding to maintain current or projected levels of staffing and operations of state government in a fiscal year; and
(4) "Secretary" means the Secretary of the Personnel Cabinet as provided for in KRS 18A.115.

Section 2. General Provisions. (1) The Secretary shall authorize the furlough of all state executive branch employees based upon a lack of funds, as certified by the State Budget Director, with the approval of the Governor.
(2) All state executive branch employees, classified and unclassified, shall be furloughed no more than twenty-four (24) work hours in a six (6) month calendar period, as provided herein:
(a) Employees regularly assigned to a forty (40) hour work schedule shall be furloughed no more than three (3) work days or twenty-four (24) work hours;
(b) Employees regularly assigned to a thirty-seven and one-half (37.5) hour work schedule shall be furloughed no more than three (3) work days or twenty-two and one-half (22.5) work hours, which is the equivalent reduction of hours and corresponding pay; and
(c) All remaining employees on different work schedules shall be furloughed in a manner to achieve an equivalent reduction of hours and corresponding pay, which shall be set forth in the furlough plan provided by the cabinet secretary or independent agency head and approved by the Secretary of Personnel.
(3) Unclassified employees appointed pursuant to KRS 18A.115(1)(d), (e), (f), (g), (h), or (i) may be furloughed additional work hours.
(4) A furloughed employee whose hours of work are temporarily reduced:
(a) Shall remain eligible for state-paid benefits during the temporary reduction of hours;
(b) Shall be notified in writing by the appointing authority at least seven (7) calendar days prior to the date of furlough, except that an employee may voluntarily agree in writing to waive the seven (7) day notice requirement;
(c) Shall not be furloughed more than twenty (20) percent of an employee's scheduled work hours in any one (1) work week, except as provided in section (5) herein;
(d) Shall not be eligible to utilize accrued leave balances in lieu of temporary reduction of hours without pay; and
(e) Shall not be entitled to appeal the reduction of work hours to the Personnel Board, the Kentucky Technical Education Personnel Board, the Kentucky State Police Trial Board, or the applicable administrative body.
(5) In addition to the mandatory furlough hours, any employee may volunteer, with the prior approval of the appointing authority, to take leave without pay and retain accrued leave balances. An employee shall submit the Voluntary Furlough Request Form to the Secretary of Personnel before the effective date of such voluntary furlough.
(6) Utilization of contractors shall be reduced in a similar manner by each appointing authority.

Section 3. Procedures. (1) Each cabinet secretary and independent agency head shall develop a furlough plan prior to implementation for the Secretary's review and approval.
(2) Each cabinet secretary and independent agency head shall submit the following information within the furlough plan for review and approval by the Secretary:
(a) The appointing authority and designees responsible for the oversight and administration of the furlough plan within that organization;
(b) The proposed manner of how furlough hours will be applied and the steps the organization took to arrive at that proposed action;
(c) A statement regarding whether the appointing authority and the Personnel Secretary have determined any provisions or exemptions are necessary to accommodate any staff employed in twenty-four (24) hour, seven (7) day-a-week operations; facilities responsible for the care or safety of inmates or employees; or, uniformed law enforcement officers or trainees that protect the citizens of the Commonwealth of the Kentucky, with supporting documentation attached;
(d) Certification and acknowledgment by the appointing authority that during the period of furlough no contractor will receive either additional duties typically performed by a furloughed employee or work additional hours due to the furlough of a state employee;
(e) A statement regarding whether or not a temporary closing of an office was an option to achieve maximum operational savings; and
(f) A copy of the notice that each employee will receive at least seven (7) calendar days prior to the first day of furlough from the appointing authority.
(3) In the event of emergency or national disaster, the Secretary has the authority to amend the furlough plan as necessary.

Section 4. Incorporation by Reference. (1) The following material is incorporation by reference: Voluntary Furlough Request Form, July 2010.
(2) This material may be inspected, copied or obtained at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday-Friday, 8:00 a.m.–4:30 p.m.

NIKKI R. JACKSON, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 13, 2010 at 3 p.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for implementing furlough plans for all state executive branch employees.

(b) The necessity of this administrative regulation: The Kentucky General Assembly, per House Bill 1 in the 2010 Extraordinary Session, established that the Secretary of Personnel must promulgate an administrative regulation prior to the furlough of any employee. The regulation is necessary to implement the authorized furlough plans, establish the criteria which must be included in these plans, and also notify employees of the consistent guidelines which will apply to all employees when a furlough plan is implemented.

(c) How this administrative regulation conforms to the content of the authorizing statutes: HB 1 of the 2010 Extraordinary Session of the Kentucky General Assembly requires the Personnel Secretary to promulgate this regulation prior to exercising the authority with which the Personnel Cabinet, the Governor, and the Office of the State Budget Director were expressly granted. Further, KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the requirements of those set forth in HB 1 of the 2010 Extraordinary Session, as it establishes how furlough plans will be submitted to the Personnel Cabinet for review, how hours of furlough are determined, and the additional guarantees that all employees will receive.

(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 regulation impacts all state executive branch cabinets and independent agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will have to formulate a Furlough Plan and submit the Plan for review and approval to the Personnel Cabinet Secretary prior to implementation. The plan will involve determination whether any staff should be exempted from any specific furlough provision, per the specific limitations set forth in the regulation. Each entity will then be responsible for implementation of their cabinet/agency plan, as well as the oversight and tracking of the unpaid leave of its employees. Proper notice to each employee is required, which is handled at the cabinet/agency level, as well as the handling of additional questions or issues which may arise.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The decision to implement furloughs was necessary to achieve the savings required by the budget passed by the General Assembly. In the first fiscal year alone, over $24 million dollars in savings will be recognized.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 1 of the 2010 Kentucky General Assembly Extraordinary Session and KRS 18A.030.

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? There are no estimated additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer.

STATEMENT OF EMERGENCY
102 KAR 1:320E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This new emergency administrative regulation provides the procedures and forms for the filing of Qualified Domestic Relations Orders (QDROs) as required by the amendment to KRS 161.700, effective 15 July 2010. A new emergency administrative regulation is necessary for the Board of Trustees of the Kentucky Teachers' Retirement System to administer the amendments to KRS 161.700 effective 15 July 2010. An ordinary administrative regulation is not sufficient because Kentucky Teachers' Retirement System does not have any procedures or forms in place in order to accept

QDROs and the procedures and forms must be in place on 15 July 2010 when the amendments to KRS 161.700 are effective. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on 14 July 2010.

STEVEN L. BESHEAR, Governor
BARBARA STERRETT, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(New Emergency Administrative Regulation)

102 KAR 1:320E Qualified domestic relations orders.

RELATES TO: KRS 161.700, 161.310, 26 U.S.C. sec. 414(p).
STATUTORY AUTHORITY: KRS 161.700, 161.310
EFFECTIVE: July 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.700 requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system.

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 161.220(26).
(2) "Benefits" means, for purposes of this administrative regulation, a monthly service or disability retirement allowance or refund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.
(3) "Member" is defined by KRS 161.220(4).
(4) "Participant" is defined by KRS 161.220(24).
(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:
(a) The member's name, KTRS member identification number and last-known mailing address;
(b) The alternate payee's name and last-known mailing address;
(c) Whether the order applies to an active account from which the member is not currently receiving a retirement allowance, or to a retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;
(d) The date of marriage;
(e) The date of decree of dissolution of marriage;
(f) That the order is for the purpose of property division;
(g) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either;
1. A fixed dollar amount; or
2. The percentage calculated under Section 7(1) of this administrative regulation;
(h) When payments shall begin;
(i) When payments shall cease;
(j) That the alternate payee shall be paid in the same form as the participant;
(k) Whether the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to such alternate payee;
(l) Who shall be responsible for payment of the KTRS processing fee; and
(m) All information required on the form incorporated by reference in this administrative regulation.
(2) A QDRO shall be:
(a) Signed by the judge of a court of competent jurisdiction;
(b) Filed with the clerk of the court; and
(c) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.
(2) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release. The employer shall return the completed form to KTRS within ten (10) work days.
(3) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:
(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and
(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.
(4) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage.
(5) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.
(6) KTRS shall not review the QDRO unless it is accompanied by the following:
(a) The KTRS Administrative Rule Compliance form which has been approved by both the participant or alternate payee or their legal counsel;
(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;
(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;
(d) Copies of the participant's and alternate payee's Social Security cards;
(e) Authorization for Direct Deposit form; and
(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including Military Service Certification and Affidavit form, with a copy of discharge papers.
(7) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel.
(8) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(9) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollars nonrefundable processing fee.

(10) Following approval by the court, the participant, alternate payee or legal counsel shall file a certified copy of the QDRO with KTRS. The QDRO shall not become effective until the certified copy is received by KTRS. Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO. While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established. Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS.

(11) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, the participant, alternate payee or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(12) The participant, alternate payee or legal counsel shall not submit a QDRO which is not final and under consideration by an appellate court.

(13) The alternate payee shall be responsible for notifying KTRS of any change in name or mailing address. KTRS shall provide a Name or Change of Address form upon request. KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable. Other than sending such notice, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee. If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee. KTRS shall have no liability to the alternate payee with respect to such amounts paid to the participant.

(14) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child or other dependent, to cease. The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate. The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments. KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

Section 4. A QDRO may apply to a participant's: (1) Retirement allowance;

(2) Disability retirement allowance; or

(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's: (1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;

(3) Accounts that are not vested at the time of the dissolution of marriage;

(4) Life insurance benefit;

(5) Refund as a result of an error;

(6) Refund of an active or retired account in response to a member's death:

(7) Health insurance; and

(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty (50) percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), multiplied by the following fraction:

(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

(b) The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of dissolution of the marriage.

(2) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(3) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d). However, if at the time of retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts. KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(4) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at the time of issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(5) The participant may select any retirement option but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KTRS Authorization for Release of Information", 14 July 2010;

(b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;

(c) "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", 14 July 2010;

(d) "KTRS Administrative Regulatory Compliance", 14 July 2010;

(e) "KTRS Confidential Information", 14 July 2010;

(f) "KTRS Authorization for Direct Deposit", 14 July 2010;

(g) "KTRS Military Service Certification and Affidavit", 14 July 2010; and

(h) "KTRS Name or Change of Address", 14 July 2010;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BARBARA STERRETT, Chairperson

APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 11 a.m.
CONTACT PERSON: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508 or fax (502) 848-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of qualified domestic relations orders ("QDRO") by Kentucky Teachers' Retirement System ("KTRS").
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.700.
(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: setting forth the procedures and timelines to be followed in filing a QDRO with KTRS, setting the filing fees, providing the formula for calculating the amount to be paid to the alternate payee, and incorporating the forms required by KTRS.
(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 informing KTRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.
(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 statues: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to participants and alternate payees of participants of KTRS who are subject to a qualified domestic relations order.
(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 comply with this administrative regulation or amendment: The participants, their alternate payees and legal counsel will have to adhere to the requirements for filing a QDRO for approval by KTRS, including the timeframes for filing the KTRS QDRO forms, payment of the processing fee, and utilization of the formula for calculation of the alternate payee's share.
(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 a $50 initial processing fee and a $25 processing fee for amended QDROs to be paid by the participant, the alternate payee or shared by both parties as ordered by the court.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted to access participants' retirement benefits which were previously exempt from distribution during dissolution of marriage.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this regulation.
(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with KTRS and cannot be quantified at this point.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of KTRS incurred in processing QDROs will be paid via the processing fees.
(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 regulation establishes the fees to be assessed for processing QDROs.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes a $50 initial processing fee and a $25 processing fee for amended QDROs.
(9) TIERING: Is tiering applied? Tiering is not applied, as all participants and alternate payees of participants are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Teachers' Retirement System.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, 161, 310.
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 additional revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.
(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? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.
(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for processing the QDROs will depend upon the number of orders received.
(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs will depend upon the number of orders received and cannot be quantified at this time.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation:

STATEMENT OF EMERGENCY
102 KAR 1:330E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This emergency new administrative regulation sets forth procedures and guidelines for recouping the costs and expenses Kentucky Teachers' Retirement System (KTRS) incurs when responding to a duly issued subpoena or order of the court for either the production of records or testimony by KTRS staff as granted by the amendments to KRS 161.585, effective 15 July 2010. A new emergency administrative regulation is necessary for the Board of Trustees of the Kentucky Teachers' Retirement System to administer the amendments to KRS 161.585 effective 15 July 2010. An ordinary administrative regulation is not sufficient because Kentucky

Teachers' Retirement System does not have any procedures or guidelines in place for processing and recouping the costs associated with the provision of records or testimony by staff and such procedures and guidelines must be in place on 15 July 2010 when the amendments to KRS 161.585 are effective. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on 14 July 2010.

STEVEN L. BESHEAR, Governor
BARBARA STERRETT, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(New Emergency Administrative Regulation)

102 KAR 1:330E. Travel and administrative expenses.

RELATES TO: KRS 161.585
STATUTORY AUTHORITY: KRS 161.585
EFFECTIVE: July 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.585 requires the Board of Trustees of Kentucky Teachers' Retirement System (KTRS) to promulgate an administrative regulation to recover travel and administrative expenses incurred when KTRS staff are required to produce records or provide testimony in response to a duly issued subpoena.

Section 1. Definitions. (1) "Cabinet" means the Finance and Administration Cabinet.
(2) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the secretary of the cabinet as a high rate area.
(3) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

Section 2. (1) Any person or party who requests a subpoena requiring the personal appearance of an employee of KTRS to appear in a court proceeding or at a deposition or administrative hearing shall pay KTRS for the travel expenses of the KTRS employee and KTRS' legal counsel, including:
(a) The then prevailing mileage rate;
(b) Parking and tolls;
(c) Meals, if the employee is required to be away from his work station before, during or after working hours;
(d) Lodging expenses, if necessary; and
(e) The wages of the employee or legal counsel for the period he is required to be away from his work station which shall be calculated by multiplying the hourly rate of the employee or legal counsel by the number of hours each is required to be away from his work station.
(2) The mileage rate, meals, and lodging expenses, including those expenses incurred in a high rate area, shall be billed or reimbursed in accordance with the reimbursement rates established by the cabinet in 200 KAR 2:006.
(3) KTRS shall send an estimated amount for the expenses to the person or party requesting the subpoena.
(a) The person or party shall forward payment for the estimated expenses prior to the date of the appearance mandated by the subpoena.
(b) KTRS shall forward an invoice with supporting receipts for any additional expenses incurred by the employee or legal counsel or issue a refund for any amount in excess of the estimated expenses. Any personal identifying information regarding the employee or legal counsel shall be redacted from the receipt prior to its release.
(4) Any person or party who requests a subpoena requiring the production of copies of records or information in the custody of KTRS in standard hard copy format shall pay KTRS a fee for such production which shall include:
(a) A copy charge of fifteen (15) cents per page;
(b) Postage based upon the weight of the package; and
(c) The wages of the employee required to compile or copy the requested records calculated by multiplying the hourly rate of the employee by the number of hours necessary to compile, copy and collate the records or information.
(5) Any person or party who requests a subpoena requiring the production of records in the custody of KTRS in an electronic format which requires KTRS staff to write a program to extrapolate the requested information from the member's database to meet the specific request may recover staff costs at a rate of twenty-five ($25.00) dollars per hour.
(6) KTRS shall notify the person or party of the fee in writing. The person or party shall forward payment for the requested records prior to release of such records by KTRS.

BARBARA STERRETT, Chairperson
APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 11 a.m.
CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8508.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes how Kentucky Teachers' Retirement System ("KTRS") shall recoup its costs associated with the production of records or testimony in response to duly issued subpoenas.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.585.
(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 delineating the expenses KTRS may assess in the course of responding to a subpoena for records or testimony of KTRS staff.
(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 listing those actions for which a fee may be assessed as well as the rate of such fees.
(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 statues: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to any agency, entity, legal counsel or participant of KTRS who issues a subpoena for the production of records or testimony by KTRS staff.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Those requesting production of records or testimony pursuant to a duly issued subpoena will be required to reimburse KTRS for expenses associated with the production of such records and testimony by KTRS staff.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to those requesting production of records or testimony of KTRS staff will depend upon the breadth of the sub-

poena, as well as whether hard copies will suffice or staff travel and testimony is required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those requesting production of records or testimony will be permitted access to records and information which were previously exempt from disclosure under KTRS' comprehensive confidentiality statute.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of subpoenas filed with KTRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses incurred by KTRS will be paid via the fees assessed for the particular request.

(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 regulation establishes the fees and costs to be assessed for responding to subpoenas.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that KTRS will utilize the same rates for mileage, meals, lodging expenses, parking and tolls as those rates set by the Finance and Administration Cabinet.

(9) TIERING: Is tiering applied? Tiering is not applied, as all those requesting information or testimony by KTRS staff are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.585, 161, 310.

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 additional revenue generated by this regulation will be dependent upon the number of subpoenas filed with KTRS and cannot be quantified at this time.

(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? Future revenue generated by this regulation will be dependent upon the number of subpoenas filed with KTRS and cannot be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for responding to the subpoenas will depend upon the nature and number of the subpoenas received.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing subpoenas will depend upon the number of subpoenas received and cannot be quantified at this time.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

STATEMENT OF EMERGENCY
105 KAR 1:190E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed amendment to the administrative regulation should be enacted on an emergency basis. This emergency amendment to the current administrative regulation provides the procedures and forms for the filing of Qualified Domestic Relations Orders (QDROs) as required by the amendment to KRS 61.690 effective July 15, 2010. An emergency amendment to the administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to administer the amendment to KRS 61.690 effective July 15, 2010. An ordinary amendment is not sufficient because Kentucky Retirement Systems has no procedures or forms in place for accepting QDROs and the forms and procedures must be in place on July 15, 2010 when the amendment to KRS 61.690 is effective. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation is identical to the emergency amendment to the administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulations Compiler on July 15, 2010.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:190E. Qualified domestic relations orders.

RELATES TO: KRS 16.505(36), (37), (38), 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34), (35), (36), 78.545(26), 26 U.S.C. sec. 414(p)[~~16.505-16.652, 61.510-61.705, 78.510-78.852~~]

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.690[~~(f)~~]

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.690 requires the retirement systems to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDORs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs[~~(3) requires the retirement systems to honor qualified domestic relations orders which comply with the policy of the Board of Trustees established by this administrative regulation~~].

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36)[~~means an individual who is named in a qualified domestic relations order to receive a portion of the member's retirement benefits~~].

(2) "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35)[~~(QDRO) means a court order issued incident to an annulment, separation or divorce which establishes an alternate payee's rights to a portion of the member's benefit~~].

(3) "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

Section 2. The provisions of this section shall only apply to QDROs that were approved by the retirement systems for enforcement prior to July 14, 2000. After the participant notifies the retirement system of the participant's requested effective retirement date, the retirement systems shall administer a QDRO that was entered prior to the participant's retirement as follows:

(1) The retirement systems shall send the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:

(a)[~~A QDRO shall be accompanied by a statement from coun-~~

~~sel that the QDRO is current and not superseded by a subsequent QDRO and shall contain the following:~~

~~(1) Certification by the clerk of the circuit court in which the QDRO was entered;~~

~~(2) The name, Social Security number and last known mailing address of the member and the alternate payee;~~

~~(3) The date of marriage and the date of decree of dissolution of marriage;~~

~~(4) The correct name of the system or systems to which it applies;~~

~~(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the alternate payee or the specific amount to be paid to the alternate payee; and~~

~~(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's retirement, death or withdrawal from the system and whether the percentage pertains to the benefits attributable to the period of marriage, the member's entire period of employment or other specified period.~~

~~Section 3. If the retirement system determines that a QDRO does not meet the requirements of Section 2 of this administrative regulation, the retirement system shall do the following:~~

~~(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO is not in compliance and will not be followed and the necessary changes to be made to the QDRO to bring it into compliance.~~

~~(2)(a) If the member is retired, the general manager shall direct the percentage or amount of benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the member's retirement allowance and placed in abeyance until the QDRO is amended.~~

~~(b) If the QDRO is not amended to comply with this administrative regulation within eighteen (18) months from the date the QDRO was first received, the percentage or amount of the member's retirement allowance held in abeyance shall be restored to the member's account and paid to the member.~~

~~(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and determined to be in compliance shall only be applied prospectively.~~

~~Section 4. A QDRO shall not be effective until received by the retirement system and shall apply only to those monthly retirement allowances that have not been processed by the retirement system by the date of receipt.~~

~~Section 5. If the QDRO is received prior to the member's retirement, then upon the member's retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of the benefits payable under the QDRO which shall be calculated as follows:~~

~~(1) The benefit payment shall be divided between the member and the alternate payee as follows:~~] The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant[~~member~~] by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's[~~member's~~] total service credit. The participant[~~member~~] shall be paid all amounts in excess of the amounts paid to the alternate payee.

(b)[~~(2)~~] If a lump sum payment equal to balance of the participant's[~~member's~~] account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the participant's[~~member's~~] account and the result paid to the alternate payee. The participant[~~member~~] shall be paid all amounts in excess of the amounts paid the alternate payee.

(c)[~~(3)~~] If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the participant's[~~member's~~] basic option.

(d)[~~(4)~~] Service added for disability under KRS 61.605 or KRS 16.582 shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this subsection.

(e)[~~(5)~~] The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the member's is eligible, the ten (10) year certain option as proved by KRS 16.576(5).

(f)[~~(6)~~] If the alternate payee predeceases the participant[~~member~~] after the participant's[~~member's~~] retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee shall be paid to the alternate payee's estate.

(g)[~~(7)~~] The alternate payee of a QDRO approved for enforcement by the retirement systems prior to July 14, 2010, shall receive [~~a pro rata share of any~~] increases given recipients under KRS 61.691.

(3)[~~Section 6. (1)~~] If the participant[~~member~~] dies prior to retirement and prior to the death of the alternate payee, the participant's[~~member's~~] account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(4)[~~(2)~~] If the death benefit is a refund of the participant's[~~member's~~] contribution account, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's[~~member's~~] account calculated in accordance with subsection (2) of this section[~~Section 5 of this administrative regulation~~].

(5)[~~(3)~~] If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment or an actuarial lump sum payment.

(6)[~~Section 7. If the QDRO is received after the member's retirement, then the alternate payee shall receive the percentage or amount of the member's retirement allowance as stated in the QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms of the payment option previously selected by the member or until the death of the alternate payee.~~

~~Section 8.~~] If the alternate payee dies prior to the participant's[~~member's~~] death, retirement or withdrawal of account, no payment shall be made to the alternate payee.

(7)[~~Section 9.~~] When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee which shall consist of the alternate payee's pro rata share of the participant's[~~member's~~] contributions, service and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant[~~member~~].

Section 3. (1) All sections of this administrative regulation, except for Section 2, shall only apply to QDROs approved for enforcement by the retirement systems on or after July 15, 2010.

(2) A QDRO shall apply to all retirement systems administered by the retirement systems as established by KRS Chapters 16, 61, and 78 in which the participant is a member during the period of the marriage that is the subject of the QDRO and from which the participant will receive retirement benefits.

(3) A QDRO shall contain the following information:

(a) The participant's name;

(b) The participant's mailing address;

(c) The participant's Kentucky Retirement Systems member identification number;

(d) The alternate payee's name;

(e) The alternate payee's mailing address;

(f) The system or systems to which the QDRO applies;

(g) The amount or percentage to be paid to the alternate payee;

(h) When payments under the QDRO are to end;

(i) How the cost of living increase provided in KRS 61.691 is to be administered; and

(j) All information required on the form that applies to the subject matter of the order:

1. Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property;

2. Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

3. Form 6436,Qualified Domestic Relations Order for Child

Support;

4. Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

5.Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 4. (1) The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for a Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO.

(a) The participant shall provide the retirement systems with the following information:

1. The participant's and the alternate payee's social security numbers;

2. The participant's and the alternate payee's dates of birth;

3. Date of marriage;

4. Date of divorce;

5. The participant's and the alternate payee's mailing addresses; and

6. The addresses of the participant's and the alternate payee's legal counsel, if any.

(2) If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:

(a) Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;

(b) Total number of months of service credit on file at the systems as of the effective date of the divorce and at the time of the request in each system in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;

(d) The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service; and

(e) The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service.

(f) The retirement systems shall use the participant's final compensation as of the date of the divorce and the service credit accrued by the participant during the marriage when calculating the participant's projected, estimated basic monthly retirement allowance and the projected, estimated actuarial refund or lump-sum refund payment.

(3) If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:

(a) Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;

(b) The total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and

(c) The total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.

(4) If information other than the information supplied by the retirement systems in accordance with subsections (2) and (3) of this section is required then the participant shall send an additional request for information in writing or the court shall issue a subpoena or an order requesting the additional information.

Section 5. (1) A QDRO shall be on the form incorporated by reference that applies to the subject matter of the order.

(2) A QDRO shall be signed by the judge of a court with jurisdiction over the case or by the head of the administrative agency with statutory authority to issue a QDRO.

(3) A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency with statutory authority to issue a QDRO.

(4) The participant, alternate payee, or their legal counsel shall submit the entered and certified QDRO to the retirement systems. A copy of the QDRO signed by the Judge and entered by the Clerk of the Court may be submitted if the copy is certified by the Clerk of the Court.

(5) The participant, alternate payee, or their legal counsel shall not submit a QDRO that is before an appellate court and is not final.

(a) The retirement systems shall have no responsibility or liability for payments made pursuant to a QDRO that was submitted in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(6) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of $50 made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the QDRO. The retirement systems shall not review the QDRO unless the fee is submitted with the QDRO.

(a) The court shall order who is to pay the fee. The court may order that the fee be divided between the participant and the alternate payee. Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis then the retirement systems may waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified QDRO.

(7) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date of the retirement systems' notification of the deficiency as provided in Section 6(4) of this administrative regulation to submit a corrected QDRO. If a corrected QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit a nonrefundable fifty (50) dollar fee with a QDRO submitted after ninety (90) days.

Section 6. (1) The retirement systems shall determine if the QDRO is complete and qualifies as a QDRO pursuant to KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation. A QDRO shall not be effective until the retirement systems has determined that it complies with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation and has approved the QDRO for enforcement. The retirement systems shall provide notification of its determination within 90 days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011. The retirement systems shall provide notification of its determination within forty-five (45) days of the submission of the QDRO after July 15, 2011.

(2) The retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the retirement systems shall place the QDRO on file until the participant files a notification of retirement or an application for refund.

(b) If the participant has retired, the retirement systems shall begin to enforce the QDRO the month after it is approved for enforcement by the retirement systems.

(3) The alternate payee shall submit a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO. If the alternate payee has not submitted a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the retirement systems shall segregate and hold the alternate payee's payments until the alternate payee has submitted the required form.

(4) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation, the retirement systems shall notify the partici-

pant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that:

(a) The retirement systems has determined the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation;

(b) The reason for the determination that the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation; and

(c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation.

Section 7. (1) If a QDRO approved for enforcement and on file at the retirement systems is amended or terminated, the participant, alternate payee, or their legal counsel shall submit the amended entered and certified QDRO or a entered and certified order terminating the QDRO to the retirement systems as provided in Section 4 of this administrative regulation.

(2) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The retirement systems shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis then the retirement systems may waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified QDRO.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The retirement systems shall review the amended QDRO using the same procedures found in Section 6 of this administrative regulation.

(4) If the retirement systems determines that the amended QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation or the order terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date of the retirement systems' notification of the deficiency as provided in Section 6(4) of this administrative regulation to submit a corrected amended QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a corrected order terminating the QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit a nonrefundable twenty-five (25) dollar fee with an amended QDRO or order terminating the QDRO that is submitted after ninety (90) days.

(5) An amended QDRO approved by the retirement systems shall only be administered prospectively.

Section 8. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.

Section 9. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property.

(2) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. The alternate payee shall not receive a retirement benefit if the participant is not receiving a retirement benefit.

Section 10. (1) The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount if the participant elects a monthly retirement benefit or as a one (1) time lump sum dollar payment if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the time of the participant's retirement, or as a lump sum dollar payment from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625;

(b) As a percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which may be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage;

2. The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest;

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee;

Section 11. (1) The provisions of this section shall only apply to participants whose membership date is prior to August 1, 2004. If a participant whose membership date is prior to August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1)(a) of this administrative regulation, the retirement system will pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(1)(b) of this administrative regulation, the retirement systems shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a) or 61.605(1) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 12. (1) The provisions of this section shall only apply to participants whose membership date is on or after August 1, 2004. If a participant whose membership date is on or after August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582.

61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as provided in Section 11(1)(b) of this administrative regulation.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 13. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

Section 14. (1) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount;

(b) As a percentage of the participant's selected monthly retirement benefit pursuant to KRS 61.595, which may be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage;

2. The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option;

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee.

Section 15. (1) If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation, the retirement systems shall:

(a) The retirement systems shall segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation.

(b) The retirement systems shall hold the segregated amount for a period of no more than eighteen (18) months;

(c) If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation within eighteen (18) months the retirement systems shall pay the segregated amount to the alternate payee;

(d) If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation after eighteen (18) months the retirement systems shall pay the segregated amount to the participant;

(e) The eighteen (18) month time period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation;

(f) If after eighteen (18) months a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively.

(2) The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.

Section 16. (1) A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(2) The amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(3) An alternate payee on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.

(4) The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.

Section 17. (1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

(2) The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(3) The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.

Section 18. (1) The participant is responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

(2) The retirement systems shall hold any payments due the alternate payee pending submission of proof of the event which causes payments to the alternate payee to end is provided by the participant beginning the month after the retirement systems' receipt of the participant's written notification.

(3) The participant shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event which causes the participant's alimony/maintenance to end.

(4) The participant shall submit a copy of the alternate payee's death certificate or other reliable documentation as proof of the event which causes the participant's payments pursuant to the division of marital property to end.

(5) The participant is not required to submit written notification if the QDRO specifies the number of months of payments.

(6) If proof is not submitted within ninety (90) days of the written notification to the retirement systems the payments being held shall be released to the alternate payee.

(7) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 19. (1) The participant is responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)(a) If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.

(b) The retirement systems shall segregate and hold the payments due to the alternate payee under a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant submits an order changing the custody of the child to someone other than the alternate payee, a copy of the child's marriage certificate, a letter from the child's high school indicating the child's graduation date, the child's birth certificate, an order of emancipation of the minor child, or the child's death certificate;

1. If the QDRO for child support is for the support of more than one (1) child, the retirement systems shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not submit an order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within ninety (90) days of the participant's submission as provided in subsection (2)(b) of this section the payments being held shall be released to the alternate payee.

(3) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, or the court order that causes payments to the alternate payee to end or be amended.

Section 20. (1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support;

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they will be administered in the order of approval by the retirement systems.

(3) If multiple QDROs for Child Support are on file, they will be administered in the order of approval by the retirement systems.

(4) If multiple QDROs for Alimony/Maintenance are on file, they will be administered in the order of approval by the retirement systems.

(5) If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.

(6)(a) If the total amount of the payments due to alternate payees under the QDROs being administered on the participant's account exceeds the amount of the participant's monthly retirement benefit, the retirement systems shall notify the participant and alternate payees under the QDROs that the QDROs cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

(b) The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.691.

Section 21. The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall have no duty or obligation to search for or locate an alternate payee.

Section 22. A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.

Section 23. (1) If the participant's retirement benefit is corrected pursuant to KRS 61.685 the alternate payee's payment shall also be corrected.

(2) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685 the retirement systems shall withhold the amount of the overpayment from the alternate payee's payment.

(3) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685 the retirement systems shall pay the alternate payee a lump sum payment of the additional funds due.

Section 24. Any person who attempts to make the retirement systems a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to the participant pursuant to a QDRO may petition the court for payment of the retirement systems' costs and legal fees.

Section 25. (1) Any person or party who requests a subpoena be issued for the personal appearance of a representative of the retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO shall reimburse the retirement systems for the travel expenses and services of the retirement systems' representative, or representatives, and the retirement systems' legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the retirement systems' personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the retirement systems' employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office; and

(e) Hotel/lodging expenses, if necessary.

(2) The retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment for the estimated expenses before the date of appearance ordered in the subpoena.

(b) The retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 26. Neither the retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004;

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", July 2010;

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", July 2010;

(d) Form 6436, "Qualified Domestic Relations Order for Child Support", July 2010;

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", July 2010;

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", July 2010;

(g) Form 6130, "Authorization for Deposit of Retirement Payment", April 2010;

(h) Form 6135, "Payment of Retirement Payment by Check" February 2002; and

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.[~~Section 10. The payment options shall be offered to the alternate payee on an Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.~~]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 20, 2010

FILED WITH LRC: July 15, 2010 at 9 a.m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a qualified domestic relations order (QDRO).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010. The procedures for administering QDROs approved for enforcement prior to July 14, 2000, are inconsistent with the amendment to KRS 61.690 effective July 14, 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010. The procedures for administering QDROs approved for enforcement prior to July 14, 2000, are inconsistent with the amendment to KRS 61.690 effective July 14, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 61.690 by establishing the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is assist in the effective administration of the statutes by establishing the procedures and incorporating the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants and alternate payees who divorce and have divided the retirement benefit pursuant to a property settlement or court order, participants paying maintenance pursuant to KRS 403.200 to an alternate payee, participants paying child support to an alternate payee.

(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 submit an entered court order on the form incorporated into 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 is a $50 fee for filing a QDRO and a $25 fee for amending a QDRO. The fee is paid by participant, alternate payee, or divided between them in accordance with the order of the court. There is no fee for child support QDROs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The retirement benefit will be divided in accordance with the court order. The alternate payee will receive the payments due under the court order.

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

(a) Initially: The cost to Kentucky Retirement Systems of implementing this administrative regulation cannot be estimated because the demands on staff time and agency resources cannot be anticipated. It is anticipated that the fees provided for by this amendment to the administrative regulation as authorized by statute will offset some of this cost.

(b) On a continuing basis: There is no continuing cost other than normal administrative costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds) and the fees paid for filing and amending of QDROs.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645, 61.690.

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? The cost for initial implementation is unknown.

(d) How much will it cost to administer this program for subsequent years? There is 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:

STATEMENT OF EMERGENCY
201 KAR 8:007E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation repeals regulations which would be in conflict with the new statutes. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(Emergency Repealer)

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:470, and 8:490.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 1-17, 22

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 3(1)

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The passage of 2010 Ky. Acts ch. 85, sec. 1-17 and 22 repealed the statutes which authorized the board to promulgate the regulations included in this emergency repealer, and 2010 Ky. Acts ch. 85, sec. 3(1) requires the board to exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry. This administrative regulation ensures that board's promulgated regulations are consistent with its statutory authority.

Section 1. The following administrative regulations are hereby repealed:

(1) 201 KAR 8:006, Advertising of dental services;

(2) 201 KAR 8:015, Registration of dental laboratories and technicians with board;

(3) 201 KAR 8:070, Vacancies; how filled;

(4) 201 KAR 8:130, X-rays by dental assistants;

(5) 201 KAR 8:135, Auxiliary personnel;

(6) 201 KAR 8:140, Continuing education compliance;

(7) 201 KAR 8:150, Dental application; examination;

(8) 201 KAR 8:160, Qualifications for examination;

(9) 201 KAR 8:170, Application prior to graduation;

(10) 201 KAR 8:180, Applicant; requirements;

(11) 201 KAR 8:185, Written examination grade requirements;

(12) 201 KAR 8:190, Examination committee;

(13) 201 KAR 8:220, Clinical examinations;

(14) 201 KAR 8:225, Credentialing of dental license;

(15) 201 KAR 8:230, Reexamination; when;

(16) 201 KAR 8:240, Clinical demonstrations;

(17) 201 KAR 8:250, Duplicate license certificate;

(18) 201 KAR 8:260, Dental hygiene application; examination;

(19) 201 KAR 8:265, Credentialing of dental hygiene license;

(20) 201 KAR 8:270, Grade requirement; dental hygiene examination;

(21) 201 KAR 8:277, Written and clinical application grade requirements;

(22) 201 KAR 8:280, Reexamination; dental hygienists;

(23) 201 KAR 8:290, Hygienists' official register;

(24) 201 KAR 8:310, Duplicate license; hygienists;

(25) 201 KAR 8:320, Notice of place of employment; hygienists;

(26) 201 KAR 8: 330, Hygienists' temporary retirement; reinstatement;

(27) 201 KAR 8:340, Specialty application; examination;

(28) 201 KAR 8:345, Educational requirements; specialties;

(29) 201 KAR 8:350, Specialty grade requirement;

(30) 201 KAR 8:355, Register; dental specialists;

(31) 201 KAR 8:400, Complaint procedure;

(32) 201 KAR 8:420, The prevention of transmission of human immunodeficiency virus and hepatitis B virus to patients by dental health care workers;

(33) 201 KAR 8:430, Unprofessional conduct;

(34) 201 KAR 8:440, Biennial fee schedule and registration;

(35) 201 KAR 8:450, Dental hygienist services when supervising dentist not physically present;

(36) 201 KAR 8:460, Administration of anesthesia by dental hygienists;

(37) 201 KAR 8:470, Coronal polishing duties of dental assistants; and

(38) 201 KAR 8:490, Expungement of records.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:470, and 8:490.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as the regulations are in conflict with 2010 Ky. Acts ch. 85, sec. 1-17 and 22.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to 2010 Ky. Acts ch. 85, sec. 77, which repeals all statutes giving authority to the regulations repealed here.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation negates conflict between 2010 Ky. Acts ch. 85 and the repealed administrative regulations.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the Kentucky Board of Dentistry 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 Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: 201 KAR 8:520E provides the fees to be paid by licensees which makes the board fully self funded and financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

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

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:390E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(Emergency Amendment)

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 6, 10, 13(2)(p)[~~KRS 313.220(4)~~]

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 6(1), 10(1)[~~KRS 313.220(4)~~]

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 6(1) requires the board to promulgate regulations concerning conscious sedation and anesthesia permits, and 2010 Ky. Acts ch. 85, sec. 10(1) requires the board to promulgate regulations concerning the conscious sedation of patients.[~~KRS 313.220(4) authorizes the Board of Dentistry to regulate the practice of dentistry in Kentucky.~~] This administrative regulation establishes the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist.

Section 1. Definitions. (1) "Conscious sedation" means a minimally depressed level of consciousness:

(a) Produced by a pharmacological or nonpharmacological method; and

(b) In which the patient is able to independently and continuously:

1. Maintain an airway; and

2. Respond appropriately to physical stimulation and verbal command.

(2) "Deep sedation" means a controlled state of depressed consciousness produced by a pharmacological or nonpharmacological method accompanied by:

(a) Partial loss of protective reflexes; and

(b) Inability to respond purposefully to verbal command.

(3) "Enteral sedation" means use of a pharmacological method that produces a minimally-depressed level of consciousness.

(4) "General anesthesia" means a controlled state of unconsciousness:

(a) Produced by a pharmacological or nonpharmacological method; and

(b) Accompanied by:

1. Partial or complete loss of protective reflexes; and

2. Inability to respond purposefully to physical stimulation or verbal command.

(5) "Parenteral" means a sedation technique in which a drug is:

(a) Absorbed directly from the site of its administration into the cardiovascular system, effectively bypassing the gastrointestinal (GI) tract; and

(b) Normally administered by injection with a syringe.

Section 2. Authorization. (1) A dentist shall not use general anesthesia on an outpatient basis for a dental patient unless he:

(a) Applies for and receives a biennial permit of authorization by the Kentucky Board of Dentistry; and

(b) Provides proof of completion of a course of study in advanced cardiac life support (ACLS) or pediatric advance life support (PALS) which meets or exceeds the standards set by the American Heart Association within twenty-four (24) months previous to the filing of the application.

(2) To receive authorization, a dentist shall:

(a) Complete one (1) year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program as described in Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

(b) Be:

1. A Diplomat of the American Board of Oral Surgery; or

2. Eligible for examination by the American Board of Oral Surgery.

(3) A permit shall not be needed if a dentist works in conjunction with a trained physician anesthesiologist licensed to practice medicine in Kentucky or a Certified Registered Nurse Anesthetist licensed in Kentucky, if that person:

(a) Is a member of the anesthesiology staff of an accredited hospital; and

(b) Remains on the premises of the dental facility or hospital until the patient regains consciousness.

(4) A facility where general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed shall meet board standards to insure that the protocol procedures, facilities, drugs, equipment, and personnel utilization are acceptable for safe and appropriate use. Board standards are established in:

(a) General Anesthesia and Deep Sedation Inspection List; and

(b) Conscious Sedation with Parenteral Drugs Inspection List.

(5) A dentist administering general anesthesia or deep sedation shall:

(a) Have completed a course in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) through a course of study which meets or exceeds the standards set by the American Heart Association within the past twenty-four (24) months; or

(b) Obtain six (6) hours of continuing education every two (2) years relating to anesthesia safety and emergency procedures.

(6) Staff assisting with the administration of general anesthesia or deep sedation shall have current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association[~~basic life support (BLS) through a course of study which meets or exceeds the standards set by the:~~

~~(a) American Heart Association; or~~

~~(b) American Red Cross~~].

(7) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and

(b) Be in addition to other continuing education requirements of 201 KAR Chapter 8.

(8) Enteral sedation. The same educational and equipment requirements established in subsection (4) of this section and Section 3 of this administrative regulation conscious sedation with parenteral drugs shall be required for the enteral sedation of patients under thirteen (13) years of age.

Section 3. Conscious Sedation with Parenteral Drugs. (1) To qualify to use a parenteral drug in conscious sedation, a dentist shall produce evidence that he:

(a) Qualifies under Section 2(2) of this administrative regulation for general anesthesia; or

(b) Has completed an approved course in conscious sedation with parenteral drugs in a program approved by the Kentucky Board of Dentistry, which includes:

1. Physical diagnosis and patient evaluation; and

2. Passing a course of didactic and clinical training:

a. Consistent with Part 2 of the ADA Guidelines for teaching the Comprehensive Control of Pain and Anxiety in Dentistry; and

b. With documentation of having treated a minimum of twenty-five (25) cases; or

(c) Is a diplomat, board eligible, eligible for board examination in a specialty, or a graduate of an accredited general practice residency, if the dentist[~~he~~] can provide proof of training in the use of conscious sedation with a parenteral drug. The training shall be consistent with Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry.

(2) A dentist and staff administering or assisting with the administration of conscious sedation with a parenteral drug shall have current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association[~~Basic Life Support (BLS) through a course of study which meets or exceeds the standards set by the:~~

~~(a) American Heart Association; or~~

~~(b) American Red Cross~~].

(3) A dentist administering conscious sedation with a parenteral drug shall:

(a) Have completed a course in Advanced Cardiac Life Support (ACLS) or pediatric advanced life support (PALS) which meets or exceeds the standards set by the American Heart Association within the past twenty-four (24) months; or

(b) Obtain six (6) hours of continuing education every two (2) years specifically relating to anesthesia safety and emergency procedures.

(4) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and

(b) Be in addition to other continuing education requirements of

201 KAR Chapter 8.

Section 4. Enteral Sedation for Patients Thirteen (13) Years and Older. This mechanism and route of sedation shall be a controlled, pharmacological induced, depressed level of consciousness. The drugs, doses, and techniques used shall carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

(1) Equipment needed. The following equipment shall be required:

(a) Oxygen delivery system with adequate full-face masks and appropriate connectors that are capable of delivering oxygen to a patient under positive pressure, and an adequate back up system;

(b) Pulse oximeter;

(c) Blood pressure cuff and stethoscope;

(d) Oral airway; and

(e) Appropriate emergency drugs.

(2) Records. Anesthesia records shall be recorded and maintained as a permanent portion of the patient's file and shall include:

(a) Informed consent for oral conscious sedation;

(b) Vital signs, blood pressure, and pulse;

(c) Patient's weight, all drugs administered, dosages, and level of consciousness; and

(d) A discharge level of consciousness, blood pressure, and pulse.

Section 5. Inspection. (1) If general anesthesia, deep sedation, enteral sedation of children under the age of thirteen (13), or conscious sedation with a parenteral drug is employed, the board may conduct an unannounced on-site inspection of a facility to determine that the protocol, procedures, facility, drug, equipment, and personnel utilization meet board standards as established in the:

(a) General Anesthesia and Deep Sedation Inspection List; and

(b) Conscious Sedation with Parenteral Drugs Inspection List.

(2) The inspection team shall:

(a) Be determined by the board; and

(b) Reflect the principles of peer review.

Section 6. Report of Injury or Mortality. A licensee engaged in the practice of dentistry in the state of Kentucky shall submit a complete report within thirty (30) days to the board of a mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.

Section 7. Personnel. The following shall be present during the administration of general anesthesia or deep sedation:

(1) The qualified operating dentist to direct the general anesthesia or deep sedation;

(2) A person to observe and monitor the patient; and

(3) An assistant to the operating dentist.

Section 8. Permit Renewal and Biennial Fee. (1) A permit shall be renewed biennially unless the dentist:

(a) Fails to obtain the:

1. Proper certification in advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or basic life support (BLS); or

2. Required hours of continuing education; or

(b) Does not utilize general anesthesia, deep sedation, or conscious sedation with a parenteral drug, or enteral conscious sedation of children under the age of thirteen (13) in a facility that meets board standards.

(2) The permit holder shall pay the fee required by 201 KAR 8:520[~~The biennial fee of thirty (30) dollars shall be paid for renewal of a permit at the time of license renewal~~].

Section 9. Nitrous Oxide. (1) To qualify to use nitrous oxide in conscious sedation, a dentist shall complete a university based course approved by the Kentucky Board of Dentistry.

(2) Equipment used in the administration of nitrous oxide shall have functional safe guard measures that:

(a) Limit the minimum delivered oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Insure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A dentist shall not need a permit to administer nitrous oxide.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for General Anesthesia and/or conscious sedation permit", July 2010[~~(July, 1995 Edition), Kentucky Board of Dentistry~~];

(b) "ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part 2", (2000 Edition), American Dental Association;

(c) "General Anesthesia and Deep Sedation Inspection List", July 2010[~~(1997 Edition), Kentucky Board of Dentistry~~]; and

(d) "Conscious Sedation with Parenteral Drugs Inspection List", July 2010[~~(1997 Edition), Kentucky Board of Dentistry~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for issuing permits to dentists for the administration of anesthesia and sedation as mandated by 2010 Ky. Acts ch. 85, sec. 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by 2010 Ky. Acts ch. 85, sec. 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by 2010 Ky. Acts ch. 85, sec. 10.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the statutory authority citation of this administrative regulation and makes cardiopulmonary resuscitation requirements and forms incorporated by reference consistent with other agency requirements.

(b) The necessity of the amendment to this administrative regulation: The statutory authority for this administrative regulation has changed, which necessitates an amendment of the statutory citation of this regulation.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides information

necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by 2010 Ky. Acts ch. 85, sec. 10.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides information necessary about the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist as required by 2010 Ky. Acts ch. 85, sec. 10. The amended forms improve agency efficiency by ensuring consistency across forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 268 current anesthesia and sedation permit holders and approximately 20 new applicants per year. Additionally, the Kentucky Board of Dentistry 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: There will be no new impact on the 268 current anesthesia and sedation permit holders and approximately 20 new applicants per year.

(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 new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): From 201 KAR 8:520E: Section 1. Dentists.

> (7) The initial fee for a dental anesthesia or sedation permit shall be $250.
>
> (8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.
>
> (9) The initial fee for an anesthesia or sedation facility certificate shall be $250.
>
> (10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.
>
> The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to administer general anesthesia, conscious sedation, and deep sedation in the Commonwealth of Kentucky. The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 licensees.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:500E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes the organization of the board, the procedure for elections, and the structure of committees of the board. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:500E. Board organization.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 2
STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 2, 2010 Ky. Acts ch. 85, sec. 3(1)(a), (h)
EFFECTIVE: July 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 2 authorizes the board to hold annual elections for vacancies, and 2010 Ky. Acts ch. 85, sec. 3(1)(h) requires the board to establish committees and subcommittees and the membership thereof. This administrative regulation establishes the organization of the board, the procedure for elections, and the structure of committees of the board.

Section 1. Vacancies for the position of dentist on the board shall be filled by candidates selected according to the following geographic chart with two (2) members representing Zone 1 and one (1) member each from Zone 2 to Zone 6, inclusive:
(1) Zone 1 - Louisville Area: Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Meade, Nelson, Oldham, Shelby, Spencer, and Trimble counties.
(2) Zone 2 - Blue Grass Area: Anderson, Bath, Bourbon, Boyle, Clark, Estill, Fayette, Fleming, Franklin, Garrard, Harrison, Jackson, Jessamine, Lee, Lincoln, Madison, Menifee, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford counties.
(3) Zone 3 - Eastern and Northeastern Area: Boone, Boyd, Bracken, Campbell, Carter, Elliott, Gallatin, Grant, Greenup, Kenton, Lawrence, Lewis, Mason, Pendleton, Robertson, and Rowan counties.
(4) Zone 4 - Kentucky Mountain, Southeastern and South Central Area: Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Floyd, Green, Harlan, Johnson, Knott, Knox, Laurel, Leslie, Letcher, Magoffin, Marion, Martin, McCreary, Metcalfe, Monroe, Morgan, Owsley, Perry, Pike, Pulaski, Russell, Taylor, Washington, Wayne, Whitley, and Wolfe counties.
(5) Zone 5 - Green River and Pennyrile Area: Allen, Barren, Butler, Daviess, Edmonson, Hancock, Hart, Henderson, Logan, McLean, Ohio, Simpson, and Warren counties.
(6) Zone 6 - Southwestern and West Central Area: Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, Muhlenberg, Todd, Trigg, Union, and Webster counties.

Section 2. Vacancies for the position of dental hygienist on the board shall be filled by candidates selected according to the following geographic chart with one (1) member being selected from each of the Zones 1 and 2:
(1) Zone 1 - East: Adair, Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carter, Casey, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Green, Greenup, Harlan, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Marion, Martin, Mason, McCreary, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Nelson, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott, Taylor, Washington, Wayne, Whitley, Wolfe, and Woodford counties.
(2) Zone 2 - West: Allen, Ballard, Barren, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hardin, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Oldham, Shelby, Simpson, Spencer, Todd, Trigg, Trimble, Union, Warren, and Webster counties.

Section 3. The board shall notify each licensed dentist and dental hygienist of an upcoming election and the need for nominations at least sixty (60) days prior to the nomination deadline by publishing the notice of election on the board's Web site, by electronic communications with the respective associations, and in written communication to all resident licensees. The notice of elections shall include the steps to nominate an individual for an open position, the date nominations will cease, the date the election will be held, and the manner in which the election will be held.

Section 4. Nominations shall be sent to the office of the board at least fifteen (15) days prior to the election in order that the candidates may consent to or decline their nominations before the election. Nominations received after the fifteen (15) day deadline shall not be accepted.

Section 5. Appointment of Committee Members and Committee Chairpersons. (1) The chairpersons and members of a standing committee of the board shall be appointed by the board president and shall be subject to approval by the board.
(2) A task force may be created:
(a) At the request of any board member subject to a majority vote of the board members; or
(b) At the discretion of the board president.
(3) Chairpersons and members of a task force created under Section 5(2)(a) of this administrative regulation shall be appointed by a majority vote of the board members. Chairpersons and members of a task force created under Section 5(2)(b) of this administrative regulation shall be appointed by the board president.
(4) Staff members of the office of the board may serve as nonvoting ex officio members of any committee, standing committee, or task force created under KRS Chapter 313 or the administrative regulations promulgated there under.
(5) Standing committee members shall have a term which expires September 30 of each calendar year. All reappointments shall be made by the board no later than September 30.
(6) Only a standing committee or task force chairperson or vice-chairperson in the absence of the chairperson may bring reports or recommendations before the board for action. All reports to the board shall be submitted in written format.
(7) A task force shall cease to exist at the close of its work. A member of a task force shall not serve for a period of more than one (1) year without reappointment. A task force shall serve at the pleasure of the board. A task force may be dissolved at any time by a majority vote of the board members.
(8) When a task force is created, the board president shall give a specific written charge to the task force with guidelines, as appropriate. The board president may establish a reporting deadline for the completion of the specific written charge.
(9) Task force members shall serve without compensation unless they are board members eligible for compensation under 2010 Ky. Acts ch. 85, sec. 2(7).

Section 6. Standing Committees of the Board. (1) Executive Committee. The executive committee shall:
(a) Address legislative issues and proposals and review administrative regulations for submission to the board, including recommending to the board the promulgation of administrative regulations, amendment of administrative regulations, or repeal of administrative regulations relating to:
1. All levels of personnel licensed, certified, or registered by the board; and
2. Rules and operating procedures for the board and each of its standing committees and task forces;
(b) Serve as a resource for board staff:
1. By creating and recommending to the board a biennial budget for the board prior to submission to appropriate state agencies;
2. By identifying, developing, and recommending to the board sources of funding for its programs; and
(c) Make recommendations to the board regarding fees to be charged by the board.
(2) Credentials Committee. The credentials committee shall review the credentials of individuals applying for licensure as a dentist or dental hygienist and make recommendations for acceptance or denial to the full board based on the requirements set forth by 201 KAR 8:530 and 8:560.

(3) Law Enforcement Committee. The law enforcement committee shall be involved with the disciplinary actions of individuals licensed or registered or who are applicants for licensure or registration by the board pursuant to 2010 Ky. Acts ch. 85, sec. 14-17. Members of this committee shall sign a confidentiality agreement with the board and shall be subject to disciplinary action of the full board if found to violate this agreement.

Section 7. Agendas. (1) A person desiring a matter to be placed on the agenda for a regular board meeting shall submit a written request to the executive director not less than twenty (20) working days prior to the board meeting.

(2) The request shall contain the following information:

(a) The matter requested to be placed before the board;

(b) The action desired on the matter;

(c) Documentation in support of the request;

(d) The name, address, telephone number, and other contact methods as may be necessary to contact the person or organization submitting the request; and

(e) The name, address, telephone number, and other contact methods as may be necessary to contact each person requesting to speak on behalf of the request at the board meeting.

(3) Not less than seven (7) working days prior to the board meeting, the president of the board shall set the agenda and cause its publication on the board's Web site and in writing. Written copies of the agenda may be obtained from the executive director after it is made public. The board may charge a reasonable fee for the provision of an agenda by mail, fax, or in hard copy. Following publication, the agenda shall be available for inspection at the office of the board.

(4) The submission of a request for a matter to be placed on the agenda at a regular board meeting shall not guarantee that the matter will be placed on the agenda, or the sequential order on the agenda of a matter approved for the agenda.

(5) The board shall adhere to the published agenda at a regular board meeting, unless the board takes action to amend the agenda.

Section 8. Quorum. (1) The board shall transact business so long as it has convened with a quorum present.

(2) A simple majority of appointed members shall constitute a quorum for standing committee and task force committee meetings.

Section 9. Voting. (1) Voting shall be accomplished by one (1) of the following methods:

(a) Voice vote;

(b) A show of hands; or

(c) A roll call vote.

(2) In order for the board to take action on a routine matter, other than those set forth Section 9(3) of this administrative regulation, a majority of board members present shall have agreed to the action.

(3) In order for the board to take action on the following matters, two-thirds of the members of the board shall have agreed to the action:

(a) Promulgate, amend, or repeal an administrative regulation;

(b) Appoint, direct, or hire by personal service contract the executive director or general counsel;

(c) Discipline or action regarding statutory employees;

(d) Initiate a legal action on behalf of the board;

(e) Hire outside legal counsel to defend the board in a legal action against the board, a member of the board acting in their official capacity, or an employee of the board acting in their official capacity, or for other specified purpose;

(f) Adopt a proposed budget for the board;

(g) Authorize the expenditure of more than $10,000, unless the amount is a routine budgeted expenditure;

(h) Take action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(i) Take an action at an emergency meeting of the board.

(4) A supermajority of the members present at a meeting shall be required in order for the board to approve or deny an application for licensure by credentials.

Section 10. Attendance of Board Staff and Employees at a Board Meeting. (1) The following staff of the board shall attend each board meeting, unless excused in writing by the president of the board or excused from the meeting by action of the board:

(a) Executive director; and

(b) General counsel.

(2) An employee of the board, other than one (1) specified in Section 10(1) of this administrative regulation shall attend a meeting of the board if requested to do so by the president of the board or the executive director.

(3) An employee of the board, other than one specified in Section 10(1) of this administrative regulation may attend a meeting of the board as part of their state duty time with the permission of the president of the board or the executive director.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the organization of the board, the procedure for elections, and the structure of committees of the board. 2010 Ky. Acts ch. 85, sec. 2 and 3 direct the make up of the board and the conduct of its business affairs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the appointment of board members and to direct the board in the conduct of its affairs.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the appointments to and make up of the board and the conduct of the board's affairs as required by 2010 Ky. Acts ch. 85, sec. 2 and 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information necessary about the appointments to and make up of the board and the conduct of the board's affairs as required by 2010 Ky. Acts ch. 85, sec. 2 and 3.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the Kentucky Board of Dentistry 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 Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board is a self funded agency who's budget was ap-

proved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: 201 KAR 8:520E provides the fees to be paid by licensees which makes the board fully self funded and financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation does not affect licensees.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:510E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes the procedures for submission, consideration, and disposition of a request for an advisory opinion. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:510E. Advisory opinions.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 3(1)(k)
STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 3(1)
EFFECTIVE: July 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 3(1) authorizes the board to issue advisory opinions. This administrative regulation establishes the procedures for submission, consideration, and disposition of a request for an advisory opinion.

Section 1. Form of Request. (1) The request shall be signed by one (1) or more persons, with each signer's mailing address and telephone number, and if available, fax number and e-mail address, clearly indicated. If a person signs on behalf of a corporation or association, the name of the entity, the address, telephone number, and fax number of the entity shall be included. The signer shall date the request.

(2) The request shall be submitted on the Advisory Opinion Request Form.

Section 2. Consideration. (1) The board president, or his designee in writing, may schedule an informal meeting between the requester, any interested persons, and a representative of the board, to present information and discuss questions raised. A final decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the board shall:

(a) Consider all materials submitted with the request;

(b) Consider any relevant document, data, or other material; and

(c) Consider comments from the board's staff.

(3) The board may:

(a) Consult experts or other individuals as it deems necessary;

(b) Require argument of the question; or

(c) Permit the introduction of evidence.

Section 3. Issuance of Opinion or Refusal to Issue an Opinion. The board shall issue an advisory opinion in response to the request, unless one (1) of the following applies:

(1) The board does not have jurisdiction over the questions presented in the request;

(2) The questions presented are pending in a disciplinary matter, or other board or judicial proceeding which may definitively decide the issues;

(3) The questions presented by the request would be more

properly resolved in a different type of proceeding;

(4) The facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an opinion;

(5) There is no need to issue an opinion because the questions raised in the request have been settled due to a change in circumstances;

(6) The requester is asking the board to determine whether a statute is unconstitutional; or

(7) The board concludes an opinion would not be in the public interest.

Section 4. Publication of Advisory Opinions. (1) All advisory opinions shall be published and maintained by the office of the board. Publication shall be made by hard copy and by placing the entire opinion on the board's Web site.

(2) All names or references which allow for the identification of parties shall be redacted from the final published advisory opinion.

(3) An index of all final published advisory opinions shall be maintained by the office of the board. The index shall include the subject of each opinion, its publication date, and any prospective changes effectuated by the opinion.

Section 5. Reconsideration and Appeals. (1) Any person may request the board to reconsider a published advisory opinion within ten (10) working days of the publication of the opinion.

(2) The request for reconsideration shall be submitted on the Advisory Opinion Request Form.

(3) Requests for reconsideration shall contain:

(a) A clear and concise statement of the grounds for the reconsideration;

(b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;

(c) Any supportive statute, administrative regulation, document, order or other statements of law or policy, with an explanation of the relevance of the material offered; and

(d) A statement of adverse impact, if any, resulting from the published advisory opinion.

(4) Any notice of appeal to the Franklin Circuit Court filed pursuant to 2010 Ky. Acts ch. 85, sec. 15 shall be served upon the board president, the executive director and the general counsel for the board.

Section 6. Incorporation by Reference. (1) "Advisory Opinion Request Form", July 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for requesting an advisory opinion from the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the requirements of 2010 Ky. Acts ch. 85, sec. 3(1)(k).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information about the procedure for requesting an advisory opinion as required by 2010 Ky. Acts ch. 85, sec. 3(1)(k).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information about the procedure for requesting an advisory opinion as required by 2010 Ky. Acts ch. 85, sec. 3(1)(k).

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the Kentucky Board of Dentistry 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 Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth and further charged in 2010 Ky. Acts ch. 85 sec. 3(1)(k) to make advisory opinions thru a process set in administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: 201 KAR 8:520E provides the fees to be paid by licensees which makes the board fully self funded and financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

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

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:520E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:520E. Fees and fines.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 4, 2010 Ky. Acts ch. 85, sec. 5, 2010 Ky. Acts ch. 85, sec. 16(2)(c)

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 4

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 4 requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a general dental license applied for in a nonrenewal year shall be $325.

(2) The initial licensure fee for a general dental license applied for in a renewal year shall be $175.

(3) The renewal fee for a general dental license appropriately renewed on or before the expiration of the license shall be $295.

(4) The renewal reinstatement fee for a general dental license renewed between January 1 and January 15 of the year following the expiration of the license shall be $280 in addition to the renewal fee.

(5) The renewal reinstatement fee for a general dental license renewed between January 16 and January 31 of the year following the expiration of the license shall be $560 in addition to the renewal fee.

(6) The renewal reinstatement fee for a general dental license renewed on or after February 1 of the year following the expiration of the license shall be $1,120 in addition to the renewal fee.

(7) The initial fee for a dental anesthesia or sedation permit shall be $250.

(8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.

(9) The initial fee for an anesthesia or sedation facility certificate shall be $250.

(10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(11) The specialty license application fee shall be $100.

(12) The specialty license renewal fee shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

(13) The fee for reinstatement of a properly retired general dental license shall be $350.

(14) The fee for reinstatement of a properly retired specialty license shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in a nonrenewal year shall be $125.

(2) The initial licensure fee for a dental hygiene license applied for in a renewal year shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately renewed on or before the expiration of the license shall be $110.

(4) The renewal reinstatement fee for a dental hygiene license renewed between January 1 and January 15 of the year following the expiration of the license shall be $130 in addition to the renewal fee.

(5) The renewal reinstatement fee for a dental hygiene license renewed between January 16 and January 31 of the year following the expiration of the license shall be $260 in addition to the renewal fee.

(6) The renewal reinstatement fee for a dental hygiene license renewed on or after February 1 of the year following the expiration of the license shall be $520 in addition to the renewal fee.

(7) The initial dental hygiene anesthesia registration fee shall be fifty (50) dollars.

(8) The initial dental hygiene general supervision registration fee shall be fifty (50) dollars.

(9) The initial dental hygiene intravenous access line registration fee shall be fifty (50) dollars.

(10) The initial dental hygiene laser debridement registration fee shall be fifty (50) dollars.

(11) The fee for reinstatement of a properly retired dental hygiene license shall be $125.

Section 3. Registered Dental Assistants. The initial registered dental assistant intravenous access line registration fee shall be fifty (50) dollars.

Section 4. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) The fee for a duplicate license shall be twenty-five (25) dollars.

(3) The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

(a) $100 for lists obtained for not-for-profit use; and

(b) $1,000 for lists obtained for profit use.

(4) The fee for a query of the National Practitioner Data Bank shall be twenty-five (25) dollars.

(5) The fee for a paper copy of the Dental Practice Act shall be fifty (50) dollars.

(6) The fee for any returned check or rejected electronic payment shall be twenty-five (25) dollars.

Section 5. General Fines. (1) Fines may be agreed to by settlement agreement in addition to the fines listed in this section.

(2) The costs of a disciplinary action taken as a result of a hearing shall be equal to the amount of all actual and necessary costs associated with the hearing.

(3) If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be $200 per hour deficient.

(4) The fine for failure of a follow-up infection control inspection shall be $1,000.

(5) The fine for failure of a follow-up anesthesia and sedation facility inspection, performed no sooner than twenty (20) days following an initial failed inspection, shall be $2,500.

Section 6. All fines and fees paid to the board are nonrefundable.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions, which is mandated by 2010 Ky. Acts ch. 85, sec. 4.

(b) The necessity of this administrative regulation: 2010 Ky. Acts ch. 85, sec. 4 requires the board to promulgate administrative regulations to establish fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

(c) How this administrative regulation conforms to the content of the authorizing statute: 2010 Ky. Acts ch. 85, sec. 4 requires the board to establish fees and fines that do not exceed the national average, which is what this administrative regulation does.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides all of the funding by which the board operates.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any individual licensed or registered by the board. To date there are approximately 3,119 currently licensed dentists and approximately 125 new applicants per year as well as 2,402 dental hygienist currently licensed by the board and approximately 100 new applicants per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order 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): Compliance with this administrative regulation will cost licensees the amount specified in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to practice dentistry, dental hygiene, or dental assisting in the Commonwealth of Kentucky.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists, dental hygienists, and dental assistants as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in this administrative regulation make the agency financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation both establishes fees and makes adjustments to the board's current fee structure without exceeding national or regional averages as directed by 2010 Ky. Acts ch. 85.

(9) TIERING: Is tiering applied? This administrative regulation applies tiering by establishing different fees for different levels of licensure or registration. Different costs reflect both the different levels of responsibility of each type of licensee and also the difference in the cost to administer different types of licenses.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough

money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:530E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes requirements and procedures for the licensure of dentists. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:530E. Licensure of dentists.

RELATES TO: KRS 214.615, 2010 Ky. Acts ch. 85, sec. 5, 2010 Ky. Acts ch. 85, sec. 6, 2010 Ky. Acts ch. 85, sec. 13, 2010 Ky. Acts ch. 85, sec. 17, 2010 Ky. Acts ch. 85, sec. 22

STATUTORY AUTHORITY: KRS 214.615(2), 2010 Ky. Acts ch. 85, sec. 3(1)(a), (b), (c), 2010 Ky. Acts ch. 85, sec. 6(1), (3), 2010 Ky. Acts ch. 85, sec. 22

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 6 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes those requirements and procedures.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed and signed Application for Dental Licensure;

(3) Pay the fee required 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;

(11) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2015, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); and

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2015, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental education shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Student Limited Licensure. (1) Each individual desiring a student limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Common-

wealth of Kentucky stating that the applicant has been accepted into a the program and the expected date of completion;

(c) Submit a signed Statement Regarding Student Licensure Limitations; and

(d) Submit an official final transcript of his dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and may only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.

(4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.

(5) Nothing in this section shall prohibit:

(a) Students from performing dental operations under the supervision of competent instructors within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize the students of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. No fee shall be accepted by the student beyond the expenses provided by the stipend;

(b) Student limited license holders from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) Volunteer health practitioners from providing services under KRS 39A.350-366.

Section 5. Requirements for Faculty Limited Licensure. (1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed Statement Regarding Faculty Licensure Limitations; and

(d) Submit an official final transcript of his dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and may only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A programs employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists. (1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based examination or a score of 116 on the internet-based examination, if English is not the applicant's native language;

(b) Submit a completed and signed Application for Dental Licensure;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(e) Provide proof of having completed the requirements of KRS 214.615(1);

(f) Complete and pass the board's jurisprudence exam;

(g) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(h) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(i) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(j) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(k) Submit one (1) letter of recommendation from the program director of each training site;

(l) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(m) Provide proof of successfully completing within the five (5) years prior to application a clinical examination approved in Section 2(2) of this administrative regulation; and

(n) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his post-graduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

Section 7. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed Application for Charitable Dental Licensure;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(d) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services which have met the requirements of 2010 Ky. Acts ch. 85, sec. 22 and 201 KAR 8:580;

(b) Only perform procedures allowed by 2010 Ky. Acts ch. 85, sec. 22, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license which shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by 2010 Ky. Acts ch. 85, sec. 1 shall:

(1) Submit a completed and signed Application for Specialty Licensure;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

Section 9. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education which relates to or advances the practice of dentistry and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including, but not limited to, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects including, but not limited to, clinical techniques and procedures, materials, and equipment;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry which meets the requirements of 2010 Ky. Acts ch. 85, sec. 22;

(j) Knowledge of office business operations and best practices; or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken which meet the requirements of subsection (2)(h)-(k) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as outlined in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At the time of license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 10. Requirements for Renewal of a Dental License. (1) Each individual desiring renewal of an active dental license shall:

(a) Submit a completed and signed Application for Renewal of Dental Licensure;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification which meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education for healthcare providers; and

(e) Meet the continuing education requirements as outlined in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

Section 11. Retirement of a License. (1) Each individual desiring retirement of a dental license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board will send written confirmation of retirement to the last known address of the licensee.

(3) No individual may retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 12. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a signed and completed Application to Reinstate a Dental License;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR which meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of his license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Reg-

istration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or the administrative regulations promulgated there under.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Licensure", July 2010;

(b) "Statement Regarding Student Licensure Limitations", July 2010;

(c) "Statement Regarding Faculty Licensure Limitations", July 2010;

(d) "Application for Charitable Dental Licensure," July 2010;

(e) "Application for Specialty Licensure", July 2010;

(f) "Application for Renewal of Dental Licensure", July 2010;

(g) "Retirement of License Form", July 2010;

(h) "Application to Reinstate a Dental License", July 2010;

(i) "Verification of Licensure or Registration Form", July 2010; and

(j) "Duplicate License or Registration Form", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dentists as mandated by 2010 Ky. Acts ch. 85, sec. 6.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 6, which requires the board to promulgate administrative regulations regarding the licensure of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by 2010 Ky. Acts ch. 85, sec. 6.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the procedure for the licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by 2010 Ky. Acts ch. 85, sec. 6.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 3,119 currently licensed dentists and approximately 125 new applicants per year. Additionally, the Board of Dentistry 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: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): From 201 KAR 8:520E:

(1) The initial licensure fee for a general dental license applied for in a nonrenewal year shall be $325.

(2) The initial licensure fee for a general dental license applied for in a renewal year shall be $175.

(3) The renewal fee for a general dental license appropriately renewed on or before the expiration of the license shall be $295.

(4) The renewal reinstatement fee for a general dental license renewed between January 1 and January 15 of the year following the expiration of the license shall be $280 in addition to the renewal fee.

(5) The renewal reinstatement fee for a general dental license renewed between January 16 and January 31 of the year following the expiration of the license shall be $560 in addition to the renewal fee.

(6) The renewal reinstatement fee for a general dental license renewed on or after February 1 of the year following the expiration of the license shall be $1,120 in addition to the renewal fee.

(7) The initial fee for a dental anesthesia or sedation permit shall be $250.

(8) The renewal fee for a dental anesthesia or sedation permit shall be $75 and is in addition to the renewal fee for a general dental license.

(9) The initial fee for an anesthesia or sedation facility certificate shall be $250.

(10) The renewal fee for an anesthesia or sedation facility certificate shall be $75.

(11) The specialty license application fee shall be $100.

(12) The specialty license renewal fee shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

(13) The fee for reinstatement of a properly retired general dental license shall be $350.

(14) The fee for reinstatement of a properly retired specialty license shall be fifty (50) dollars and is in addi-

tion to the renewal fee for a general dental license. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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? This administrative regulation applies tiering by identifying each classification of licensure available to dentists in the Commonwealth of Kentucky. General dental licenses are the standard, full license type available, and applicants are therefore subject to the full complement of requirements. Reporting requirements are reduced for student, faculty, and charitable limited license applicants as they are subject to restrictions of practice. Specialty license holders are subject to additional reporting requirements as they hold a more advanced license than general dentists.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:540E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes minimal requirements for documentation and Centers for Disease Control compliance. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:540E. Dental practices.

RELATES TO: 42 U.S.C. sec. 300ee-2 note, 2010 Ky. Acts ch. 85, sec. 10

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 10(1)

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Section 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines which are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures, and 2010 Ky. Acts ch. 85, sec. 10(1) requires the board to promulgate administrative regulations relating to dental practices which shall include minimal requirements for documentation and Centers for Disease Control compliance. This administrative regulation establishes these requirements.

Section 1. Definition. "Invasive procedure" means any procedure which penetrates hard or soft tissue.

Section 2. Minimum Documentation Standards for all Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth (18) birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) Each patient record for a dental patient in the Commonwealth of Kentucky shall include at a minimum:

(a) The patient's name;
(b) The patient's date of birth;
(c) The patient's medical history;
(d) The date of treatment;
(e) The tooth number, surfaces, or areas to be treated;
(f) The material used in treatment;
(g) Local or general anesthetic used, the type, and the amount;
(h) Sleep or sedation dentistry medications used, the type, and the amount; and
(i) A complete list of prescriptions provided to the patient, the amount given, and the number of refills indicated.

Section 3. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:
(a) Adhere to the universal precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and
(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same universal precautions.
(2) The board or its designee may perform an infection control inspection of a dental practice utilizing the Infection Control Inspection Checklist.
(3) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board. The dentist may receive a second inspection after the thirty (30) days have passed. If the dentist fails the second inspection they shall be immediately temporarily suspended pursuant to 2010 Ky. Acts ch. 85, sec. 14 until proof of compliance is provided to the board and they shall pay the fine as prescribed in 201 KAR 8:520.
(4) Any licensed dentist, licensed dental hygienist, registered dental assistant, or dental assistant in training for registration who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.
(5) Upon the request of a licensee or registrant, the executive director of the board or his designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 4. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:
(1) Provide written notice to the patient of the termination;
(2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and
(3) Retain a copy of the letter of termination in the patient records.

Section 5. Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and
(b) "Infection Control Inspection Checklist", July 2010.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, President
APPROVED BY AGENCY: July 10, 2010
FILED WITH LRC: July 15, 2010 at 11 a.m.
CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, infection control, and termination of the doctor patient relationship as required by 2010 Ky. Acts ch. 85, sec. 10.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and other parts of the dental practice.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and other parts of the dental practice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and other parts of the dental 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: 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 statute: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 3,119 dentist currently licensed by the board as well as any new dentist licensed by the board in the future. Additionally, the Kentucky Board of Dentistry 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: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.
(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 new cost to the licensees with this emergency administrative regulation. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 licensed dentist.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:560E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes requirements and procedures for the licensure of dental hygienists. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:560E. Licensure of dental hygienists.

RELATES TO: KRS 214.615, 2010 Ky. Acts ch. 85, sec. 5, 2010 Ky. Acts ch. 85, sec. 7, 2010 Ky. Acts ch. 85, sec. 10, 2010 Ky. Acts ch. 85, sec. 13, 2010 Ky. Acts ch. 85, sec. 17, 2010 Ky. Acts ch. 85, sec. 22

STATUTORY AUTHORITY: KRS 214.615(2), 2010 Ky. Acts ch. 85, sec. 3(1)(a)-(c), 2010 Ky. Acts ch. 85, sec. 7(1), (2), and (7), 2010 Ky. Acts ch. 85, sec. 22(8)

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 7 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes those requirements and procedures.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed and signed Application for Dental Hygiene Licensure;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(11) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2015, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); or

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2015, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene when he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed Application for Charitable Dental Hygiene Licensure;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(d) Have a license to practice dental hygiene in good standing in another state; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) Individuals licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services which have met requirements of 2010 Ky. Acts ch. 85, sec. 22 and 201 KAR 8:580;

(b) Only perform procedures allowed by 2010 Ky. Acts ch. 85, sec. 22, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license which will be good for two (2) years and expire during the regular dental hygiene renewal cycle.

Section 5. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education which relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, but not limited to, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects including, but not limited to, clinical techniques and procedures, materials, and equipment;

(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene which meets the requirements of 2010 Ky. Acts ch. 85, sec. 22;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken which meet the requirements of subsection (2)(g)-(j) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as outlined in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At the time of license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License. (1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed and signed Application for Renewal of Dental Hygiene Licensure;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification which meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education of healthcare providers; and

(e) Meet the continuing education requirements as outlined in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal bi-

ennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License. (1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board will send written confirmation of retirement to the last known address of the licensee.

(3) No individual may retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 8. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a signed and completed Application to Reinstate a Dental Hygiene License;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR which meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 11. Requirements for Local Anesthesia Registration. (1) An individual who has completed a course of study in dental hygiene at a board-approved CODA accredited institution on or after July 15, 2010, which meets or exceeds the education requirements as set forth in 2010 Ky. Acts ch. 85, sec. 10(10) shall be granted the authority to practice local anesthesia upon the issuance by the board of a dental hygiene license.

(2) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia and does not qualify to do so under Section 12(1) of this administrative regulation shall complete a training and education course as described in 2010 Ky. Acts ch. 85, sec. 10(10).

(3) The training and education course shall be offered by one (1) of the following institutions in Kentucky:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program;

(d) Lexington Community College Dental Hygiene Program; and

(e) Kentucky Community Technical College System Dental Hygiene Programs.

(3) Training received outside of Kentucky shall be from a CODA accredited dental or dental hygiene school and shall meet the requirements established in 2010 Ky. Acts ch. 85, sec. 10(10).

(4) Once the required training is complete the applicant shall:

(a) Complete the Dental Hygiene Local Anesthesia Registration Application; and

(b) Pay the fee required by 201 KAR 8:520.

(5) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to administer local anesthesia.

(6) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(7) Any licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board approved refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the General Supervision Registration Application;

(b) Meet the requirements of 2010 Ky. Acts ch. 85, sec. 7(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable the dates and hours of employment by a dentist in the practice of dental hygiene which demonstrate the required two (2) years and 3,000 hours of experience;

(d) Successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies which shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) Individuals authorized to practice under these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to 2010 Ky. Acts ch. 85, sec. 7(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;
(b) Radiographic records requested;
(c) Dental hygiene procedures requested;
(d) Name of the patient;
(e) Date of last oral examination;
(f) Date of the written order; and
(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services under 2010 Ky. Acts ch. 85, sec. 7(7) as part of the General Supervision Registration Application.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as listed in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, 2007 Edition, American Dental Association.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision registration issued by the board.

Section 13. Requirements for Starting Intravenous Access Lines. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;
(b) Pay the fee required by 201 KAR 8:520;
(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start IV access lines if the licensee does not hold a registration to start IV access lines issued by the board.

Section 14. Requirements for Performing Laser Debridement. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to perform laser debridement while under the direct supervision of a dentist licensed by the board shall:

(a) Submit a signed and completed Application for Laser Debridement Registration;
(b) Pay the fee required by 201 KAR 8:520;
(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not hold a registration to do so issued by the board.

Section 15. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or the administrative regulations promulgated thereunder.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Hygiene Licensure", July 2010;
(b) "Application for Charitable Dental Hygiene Licensure", July 2010;
(c) "Application for Renewal of Dental Hygiene Licensure", July 2010;
(d) "Retirement of License Form", July 2010;
(e) "Application to Reinstate a Dental Hygiene License", July 2010;
(f) "Verification of Licensure or Registration Form", July 2010;
(g) "Duplicate License or Registration Request Form", July 2010;
(h) "Dental Hygiene Local Anesthesia Registration Application", July 2010;
(i) "General Supervision Registration Application", July 2010;
(j) "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", 2007 Edition;
(k) "Application for Intravenous Access Line Registration", July 2010; and
(l) "Application for Laser Debridement Registration", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President
APPROVED BY AGENCY: July 10, 2010
FILED WITH LRC: July 15, 2010 at 11 a.m.
CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dental hygienist as mandated by 2010 Ky. Acts ch. 85, sec. 7. This administrative regulation also establishes the requirements for the administration of local anesthesia by a licensed dental hygienist as required in 2010 Ky. Acts ch. 85 sec. 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements and procedures for the licensure of dental hygienist as mandated by 2010 Ky. Acts ch. 85, sec. 7 and establishes the requirements for the administration of local anesthesia by a licensed dental hygienist as required in 2010 Ky. Acts ch. 85 sec. 10.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 7 and 10, which requires the board to promulgate administrative regulations regarding the requirements the licensure of dental hygienist and the requirements for the administration of local anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 7 and 10, which requires the board to promulgate administrative regulations regarding the requirements the licensure of dental hygienist and the requirements for the administration of local anesthesia.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 2,402 dental hygienist currently licensed by the board as well as any new dental hygienist licensed by the board in the future. Additionally, the Kentucky Board of Dentistry will be affected by this administra-

tive 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: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the fees established in 201 KAR 8:520E are:

1. The initial licensure fee for a dental hygiene license applied for in a non-renewal year shall be $125.

2. The initial licensure fee for a dental hygiene license applied for in a renewal year shall be seventy-five (75) dollars.

3. The renewal fee for a dental hygiene license appropriately renewed on or before the expiration of the license shall be $110.

4. The renewal reinstatement fee for a dental hygiene license renewed between January 1 and January 15 of the year following the expiration of the license shall be $130 in addition to the renewal fee.

5. The renewal reinstatement fee for a dental hygiene license renewed between January 16 and January 31 of the year following the expiration of the license shall be $260 in addition to the renewal fee.

6. The renewal reinstatement fee for a dental hygiene license renewed on or after February 1 of the year following the expiration of the license shall be $520 in addition to the renewal fee.

7. The initial dental hygiene anesthesia registration fee shall be fifty (50) dollars.

8. The initial dental hygiene general supervision registration fee shall be fifty (50) dollars.

9. The initial dental hygiene intravenous access line registration fee shall be fifty (50) dollars.

10. The initial dental hygiene laser debridement registration fee shall be fifty (50) dollars.

11. The fee for reinstatement of a properly retired dental hygiene license shall be $125. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to practice dental hygiene in the Commonwealth of Kentucky. Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dental hygienist as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 is applied in as much as the dental hygienist wishes to undertake additional responsibilities allowed under the authority of the dentist for which he works. This administrative regulation establishes additional requirements for individual wishing to practice under the general supervision of the dentist, use lasers for debridement, or establish inter venous access on patients.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:570E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:570E. Registration of dental assistants.

RELATES TO: KRS 214.615, 2010 Ky. Acts ch. 85, sec. 5, 8, 9, 13, 17

STATUTORY AUTHORITY: KRS 214.615(2), 2010 Ky. Acts ch. 85, sec. 3(1)(a), (b), (c), 8(1)

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 8(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes those requirements and procedures.

Section 1. Definition. "Coronal polishing" means a procedure which is adjunctive to the dental prophylaxis which is performed by a licensed dentist or dental hygienist.

Section 2. General Registration Requirements. (1) An applicant desiring registration as a dental assistant in the Commonwealth shall at a minimum:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed Application for Dental Assistant Registration;

(c) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent registration;

(d) Provide proof of completion of the requirements of KRS 214.615(1);

(e) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(f) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(g) Provide proof of one (1) year dental office experience along with the name and address of the supervising dentist.

(2) Any individual practicing as a dental assistant in the Commonwealth of Kentucky on July 15, 2010, shall apply for registration no later than July 15, 2011.

(3) Any individual who has successfully completed a CODA accredited dental assisting program may register with the board without proving one (1) year of dental office experience.

Section 3. Issuance of Initial Registration. Once an applicant has completed the requirements of Section 2 of this administrative regulation the board shall:

(1) Issue a registration in sequential numerical order; or

(2) Deny registration due to a violation of KRS Chapter 313 or the administrative regulations promulgated there under.

Section 4. General Training Requirements. (1) A registered dental assistant may perform any duty on the delegated duty list, which is incorporated by reference, so long as the individual has been trained by the employing dentist and the dentist retains proof of the training.

(2) Proof of training shall include the following:

(a) Name of the individual trained;

(b) Name of the individual providing the training;

(c) Date the training was completed; and

(d) A list of specific duties delegated to the assistant from the delegated duty list.

(3) This training may be conducted prior to the registration of the dental assistant if the training is documented by the employing dentist.

Section 5. Coronal Polishing Requirements. (1) A registered dental assistant may perform coronal polishing if he or she:

(a) Completes the training described in subsection (2) of this section; and

(b) Obtains a certificate from the authorized institution, which shall be provided to the board for the assistant's file and maintained in the employee's personnel file at each place of employment.

(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:

(a) Overview of the dental team;

(b) Dental ethics, jurisprudence and legal understanding of procedures allowed by each dental team member;

(c) Management of patient records, maintenance of patient privacy, and completion of proper charting;

(d) Infection control, universal precaution, and transfer of disease;

(e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;

(f) Definition of plaque, types of stain, calculus, and related terminology and topics;

(g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;

(h) Ergonomics of proper positioning of patient and dental assistant;

(i) General principles of dental instrumentation;

(j) Rationale for performing coronal polishing;

(k) Abrasive agents;

(l) Coronal polishing armamentarium;

(m) Warnings of trauma which can be caused by improper techniques in polishing;

(n) Clinical coronal polishing technique and demonstration;

(o) Written comprehensive examination covering the material listed in this section, which shall be passed by a score of seventy-five (75) percent or higher;

(p) Completion of the reading component as required by subsection (3) of this section; and

(q) Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.

(3) A required reading component for each course shall be prepared by each institution offering coronal polishing education which shall:

(a) Consist of the topics established in subsection (2)(a) to (n) of this section;

(b) Be provided to the applicant prior to the course described in subsection (2) of this section; and

(c) Be reviewed and approved by the board.

(4) The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program;

(d) Lexington Community College Dental Hygiene Program; and

(e) Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.

Section 6. X-rays by Registered Dental Assistants. A registered dental assistant may take x-rays under the direct supervision of a dentist licensed in Kentucky if the assistant completes:

(1) A six (6) hour course in dental radiography safety approved by the board; and

(2) Four (4) hours of instruction in dental radiography technique while under the employment and supervision of the dentist in the office; or

(3) A four (4) hour course in radiography technique approved by the board.

Section 7. Requirements for Starting Intravenous Access Lines. (1) An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit

issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

(b) Pay the fee required by 201 KAR 8:520;

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) Individuals authorized to practice under this provision shall receive a registration from the board indicating registration to start IV access lines.

(3) A registered dental assistant shall not start IV access lines if the registrant does not hold a registration to start IV access lines issued by the board.

Section 8. Renewal Requirements. An individual desiring renewal of an active dental assistant registration shall:

(1) Submit a completed and signed Application for Renewal of Dental Assistant Registration;

(2) Maintain with no more than a thirty (30) day lapse CPR certification which meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board; and

(3) Have their application signed by the supervising dentist as to their continued competency in the duties assigned to them from the delegated duties list.

Section 9. Expiration of a Registration. (1) A registration shall expire:

(a) Upon termination of employment as a dental assistant under the direct supervision of a licensed dentist; or

(b) Upon the expiration date listed on the registration in the event that a registered dental assistant fails to renew the registration.

(2) Any registration issued by the board prior to December 31, 2010, shall be valid until December 31, 2012.

Section 10. Reciprocity. A registered dental assistant who does not meet the requirements of Section 5 of this administrative regulation may apply for and be granted a certificate to perform coronal polishing in the Commonwealth of Kentucky if he or she provides:

(1) Credentialing information which shall include:

(a) A copy of the credentials issued in the other jurisdiction; and

(b) A copy of the law and administrative regulations of that jurisdiction which specify requirements that are equal to or greater than the requirements established in 2010 Ky. Acts ch. 85, sec. 8 and this administrative regulation; or

(2) Educational information which shall include:

(c) A syllabus of course work successfully completed by the applicant from the accrediting dental hygiene or dental assisting program; and

(d) Verification of successful completion of the accredited course.

Section 11. Verification of Registration. An individual desiring verification of a dental assistant registration shall:

(1) Submit a signed and completed Verification of License or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 12. Duplicate Registrations. An individual desiring a duplicate dental assistant registration shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Assistant Registration", July 2010;

(b) "Delegated Duty List", July 2010;

(c) "Application for Intravenous Access Line Registration", July 2010;

(d) "Application for Renewal of Dental Assistant Registration", July 2010;

(e) "Verification of Licensure or Registration Form", July 2010; and

(f) "Duplicate License or Registration Request Form", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the registration of dental assistants and establishes the requirements for training in coronal polishing for registered dental assistants as required by 2010 Ky. Acts ch. 85, sec. 8.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 8, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 8, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 8, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new level of provider to be registered by the board so the number of individuals affected by this regulation is unknown. Additionally, the Kentucky Board of Dentistry 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: This regulation requires individuals to register with the board after having been trained for a minimum of one (1) year by a supervising dentist. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): There will be no new cost to the individual with this emergency administrative regulation. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice as a registered dental assistant in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 registered dental assistants.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 8:580E

The complete repeal and reenactment of KRS Chapter 313 during the 2010 regular session of the Kentucky General Assembly makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes requirements for charitable dental practices and postdisaster clinics. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. WILLIAM P. BOGGESS, DMD, President

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Emergency Administrative Regulation)

201 KAR 8:580E. Charity dental practices and postdisaster clinics.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 22

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 3(1), 22

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 3(1) requires the board to exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry, 2010 Ky. Acts ch. 85, sec. 10 requires the board to promulgate administrative regulations relating to dental practices, and 2010 Ky. Acts ch. 85, sec. 22 requires the board to promulgate administrative regulations relating to the charitable practice of dentistry. This administrative regulation establishes requirements for charitable dental practices and postdisaster clinics.

Section 1. Minimum Documentation Standards for All Dental Patients of a Charitable Dental Practice or Postdisaster Clinic. Each patient record for a dental patient of a charitable dental practice or postdisaster clinic in the Commonwealth of Kentucky shall include at a minimum:

(1) The patient's name;

(2) The patient's date of birth;

(3) The patient's medical history;

(4) The patient's dental history;

(5) The patient's current medications from all healthcare providers;

(6) The date of current treatment;

(7) The diagnosis;

(8) The treatment options presented to the patient;

(9) The tooth number and surfaces to be treated, which shall be included in the progress notes;

(10) The patient's current blood pressure reading;

(11) Informed consent by the patient; and

(12) Signature or initials of the provider.

Section 2. Documentation of Infection Control Procedures. All charitable dental practices and postdisaster clinics in the Commonwealth of Kentucky shall adhere to the universal precautions outlined in the Guidelines for Infection Control in Dental Health-

Care Settings published by the Centers for Disease Control and Prevention and shall retain documentation proving that:

(1) All workers have been educated in the charitable dental practice or postdisaster clinic procedures for infection control;

(2) All workers involved in patient treatment of have received a Hepatitis B vaccination or have signed a waiver;

(3) A policy is in place requiring all staff involved in clinical patient care to wear a fresh set of gloves for each patient;

(4) A policy is in place related to all staff changing gloves between patients;

(5) A policy is in place related to all staff wearing protective clothing during patient care;

(6) A policy is in place related to all staff wearing mask when procedures involve spatter;

(7) The charitable dental practice or postdisaster clinic contains the necessary supplies to comply with the aforementioned policies;

(8) All hand-pieces are sterilized following each patient treatment by one of the following means:

(a) Autoclave;

(b) Dry heat; or

(c) Heat or chemical vapor.

(9) There is routine verification that sterilization methods are functioning properly;

(10) Individual burs, hand instruments, and rotary instruments are either discarded or sterilized following each use;

(11) A policy is in place which addresses the disinfection of all operatory equipment and surfaces between patients;

(12) All surfaces that are difficult to disinfect are covered with a nonpenetrable barrier;

(13) A policy is in place requiring that all nonpenetrable surfaces are changed between patients;

(14) Disinfectant is used, including the name and type of the disinfectant;

(15) A policy is in place which describes a separate place for the cleaning, disinfecting, and sterilization of items, with a mechanism of separation from the patient treatment area that may be:

(a) An enclosed instrument table;

(b) Curtains or wall separation; or

(c) Bagging of the instruments;

(16) A policy is in place which provides for the protection of dental records, charts, and radiographs from biohazards while those items are in the patient treatment area, or if no protection exists, charts shall be readily reproducible with limited effort; and

(17) An agreement exists with an agency to properly dispose of all medical waste and biohazardous material, including sharps, instruments, and human tissue.

Section 3. Infection Control Inspections. (1) The board or its designee may perform an infection control inspection of a charitable dental practice or postdisaster clinic utilizing the Infection Control Inspection Checklist.

(2) Any charitable dental practice or postdisaster clinic which is found deficient upon an initial infection control inspection shall not be allowed to continue until the clinic coordinator provides proof to the board that the charitable dental practice or postdisaster clinic is in compliance.

Section 4. General Requirements for Charitable Dental Practices and Postdisaster Clinics. All charitable dental practices and postdisaster clinics in the Commonwealth shall comply with the following requirements:

(1) The clinic coordinator, who shall supervise and oversee all charitable dental practice or postdisaster clinic functions, shall be a Kentucky licensed dentist;

(2) There shall be a functional radiograph machine on site;

(3) Follow-up care provisions shall be in place for each patient requiring follow-up care;

(4) A written blood-borne pathogen exposure control plan shall be kept on site;

(5) A sharps stick protocol shall be followed in which:

(a) The entity that will collect specimens shall be identified prior to the start of the event; and

(b) The laboratory that will perform blood work analysis shall be identified prior to the start of the event.

(6) Postoperative instructions shall be delivered to the patient prior to the patient leaving;

(7) No dentist shall supervise more than six (6) students in a charitable dental practice or postdisaster clinic;

(8) All procedures shall be concluded by the end date of the charitable dental practice or postdisaster clinic unless a Kentucky licensed dentist has stated in writing that the licensee shall complete the procedure in a timely manner at his practice;

(9) All charitable dental practices with the exception of postdisaster clinics shall notify the board no less than thirty (30) days prior to the start of an event of the dates, locations, and host of the event;

(10) A charitable dental practice or postdisaster clinic shall provide the names and license numbers of all participating dentists and dental hygienists no later than fifteen (15) days postevent;

(11) All narcotics prescriptions written during an event shall be approved by a designated dental prescription coordinator who shall hold a full license to practice dentistry in the Commonwealth of Kentucky;

(12) A written emergency medical response plan shall be kept on site; and

(13) All charitable dental practices or postdisaster clinics larger than forty (40) chairs shall have at least one (1) Basic Life Support (BLS) ambulance on site for the duration of the event.

Section 5. Registered Dental Assistants and Auxiliary Personnel. (1) For the purpose of a charitable dental practice or postdisaster clinic, any individuals other than a licensed dentist or licensed dental hygienist shall be restricted to the duties of a dental auxiliary; and

(2) No one shall take radiographs without meeting the requirements of 201 KAR 8:570.

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

(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and

(b) "Infection Control Inspection Checklist", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, infection control, and requirements to hold a charity clinic or post disaster clinic as required by 2010 Ky. Acts ch. 85, sec. 10 and 22.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10 and 22, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10 and 22, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10 and 22, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Dentistry will be affected by this administrative regulation. Additionally, any entity who desires to have a charity clinic in the Commonwealth will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth. This regulations provides guidance to individuals who desire to offer a charity clinic in the Commonwealth and gives direction to protect the public during these clinics.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The cost to the entities desiring to offer a charity clinic is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees offer a charity clinic in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 individuals or entities wishing to host a charity clinic or post disaster clinic.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 39:050E

This emergency administrative regulation is necessary to avoid a further shortage of Certified Deaf Interpreters in the Commonwealth. An ordinary administrative regulation is insufficient because a number of Certified Deaf Interpreters are scheduled to be terminated without further extensions prior to the date by which an ordinary administrative regulation could be placed in effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 16, 2010.

STEVE BESHEAR, Governor
ARTIE GRASSMAN, Chair

GENERAL GOVERNMENT CABINET
Board of Interpreters for the Deaf and Hard of Hearing
(Emergency Amendment)

201 KAR 39:050E. Renewal of licenses and extension of temporary licenses.

RELATES TO: KRS 309.304(5), 309.312, 309.314

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314

EFFECTIVE: June 16, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314

establishes requirements for annual renewal of the license. This administrative regulation sets forth that process in detail.

Section 1. Definitions. (1) "CDI" means a Certified Deaf Interpreter.

(2) "EIPA" means Education Interpreter Performance Assessment.

(3) "ESSE: I" means Educational Signs Skills Evaluation: Interpreting.

(4) "ESSE: R" means Educational Signs Skills Evaluation: Receptive.

(5) "NAD" means National Association for the Deaf.

(6) "NIC" means National Interpreter Certification.

(7) "Nondegreed applicant" means an individual who has either no degree or a degree other than an interpreter training program degree.

(8) "RID" means Registry of the Interpreters for the Deaf.

(9) "SCPI" means Sign Communication Proficiency Interview.

Section 2. Renewal of Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

(1) A completed "License Renewal Application" form;

(2) The renewal fee as established in 201 KAR 39:040, Section 3;

(3) Proof of current certification of the licensee as established in 201 KAR 39:030; and

(4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090, Section 2(1).

Section 3. A license not renewed by July 1, may be renewed during the following sixty (60) day period, in accordance with KRS 309.314(2), by:

(1) Complying with the requirements established in Section 1 of this administrative regulation; and

(2) Submitting the late renewal fee established in 201 KAR 39:040, Section 4(1).

Section 4. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

(1) Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 5(1);

(2) Submission of a completed "License Reinstatement Application" Form to the board;

(3) Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 10; and

(4) Completion of the requirements of Section 5 of this administrative regulation.

Section 5. Extensions of Temporary Licenses. Effective July 1, 2007, an application for extension of a temporary license for 2007/2008 shall be classified as a first renewal and the applicant's first request for an extension. Subsequent requests for extension shall meet the requirements of subsection 1, 2, or 3 of this section. An applicant who comes into the system after July 1, 2007 shall meet the applicable requirements for the first request for an extension.

(1) Requirements for graduates of a degreed interpreter training program.

(a) A graduate of a baccalaureate or associate interpreter training program may apply on or before July 1, for a first extension of a temporary license by submitting:

1. A copy of the test results of either the RID written exam or the NIC written exam; or

2. Documentation of a valid NAD Level III certification.

(b) An extension shall be valid for one (1) year.

(c) In order to obtain a second one (1) year extension, a graduate shall submit, on or before July 1, proof that the graduate:

1. Has taken and passed either the RID written exam or NIC written exam; or

2. Holds a valid NAD III certification.

(d) In order to obtain a third and final one (1) year extension, a graduate shall submit, on or before July 1, proof that the graduate has taken either the RID performance exam or the NIC performance exam.

(e) An extension may be granted pending test results.

(2) Requirements for nondegreed applicants.

(a) NAD III or SCPI: advanced certified.

1. A nondegreed applicant who is either NAD III or SCPI: advanced certified and who interprets in both the community and a P-12 educational setting is entitled to a maximum of three (3) extensions.

2. To obtain the first extension, an applicant shall submit, on or before July 1, proof of:

a. Valid NAD III certification; or

b. Having passed the NIC or RID written exam.

3. To obtain a second extension, an applicant shall submit, on or before July 1, proof of:

a. Certification of NAD III or SCPI: advanced; and

b. Having taken either the RID or NIC performance exam.

4. To obtain a third and final extension, an applicant shall submit, on or before July 1, proof of:

a. NAD III certification; or

b. SCPI: advanced certification.

(b) Nondegreed applicants who are not NAD III certified and work in a P-12 educational setting.

1. In order to obtain a first extension, an applicant shall submit, on or before July 1, proof of:

a. An EIPA score of three and five tenths (3.5) or higher;

b. An ESSE: I score of four and zero tenths (4.0) or higher and an ESSE: R score of four and zero tenths (4.0) or higher;

c. SCPI: advanced certification; or

d. Test results of either the RID written exam or the NIC written exam.

2. In order to obtain a second extension, an applicant shall submit, on or before July 1, proof that the applicant has taken and passed the RID written exam or the NIC written exam.

3. In order to obtain a third and final extension, an applicant shall submit, on or before July 1, proof of having taken either the RID performance exam or the NIC performance exam.

(c) Deaf applicants interpreting in the community and a P-12 educational setting.

1. In order to obtain a first extension, a deaf applicant shall submit, on or before July 1, a copy of the test results of the CDI written exam.

2. In order to obtain a second extension, a deaf applicant shall submit, on or before July 1 of the fifth year following the first extension, proof of having passed the CDI written exam.

3. In order to obtain a third and final extension, a deaf applicant shall submit, on or before July 1 of the fifth year following the second extension, proof of having taken the CDI performance exam.

Section 6. To request an extension of a temporary license a licensee shall submit to the board:

(1) A completed "Temporary License Extension Application" Form;

(2) A report from a supervisor describing the progress achieved by the person who was supervised and a recommendation from the supervisor as to whether the license should be extended;

(3) Proof of completion of the continuing education requirements as set forth in 201 KAR 39:090;

(4) An explanation of the need for the extension request; and

(5) The fee set forth in 201 KAR 39:040, Section 4(2).

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

(a) "License Renewal Application, 2001" form;

(b) "License Reinstatement Application, 2001" form; and

(c) "Temporary License Extension, 2001" form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARTIE GRASSMAN, Chair

APPROVED BY AGENCY: June 4, 2010
FILED WITH LRC: June 16, 2010 at 1 p.m.
CONTACT PERSON: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone 502 573-2604.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West
(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation establishes procedures for the renewal and extension of licenses as an interpreter.
(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 309.304(5), 309.312, 309.314.
(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 generally.
(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 delineating application procedures and requirements for those seeking to renew or extend a license or temporary license respectively.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It changes the length of the second and third extension for a CDI from 2 to 5 years.
(b) The necessity of the amendment to this administrative regulation: National studies have indicated that CDI educational opportunities have not been sufficient to meet time requirements for progress in licensure.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.312(3) establishes that board may establish circumstances for granting extensions.
(d) How the amendment will assist in the effective administration of the statutes: This regulation is required by KRS 309.312
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4 individuals are temporarily licensed Certified Deaf Interpreters.
(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: Temporary licensed CDIs will have a longer period to pass a written and performance exam.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal, if any.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Temporary licensed CDIs will have a longer period to pass a written and performance exam.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees will be required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish fees.
(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(5), 309.312, 309.314.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? None
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
302 KAR 20:115E

Pursuant to KRS 13A.190, the Governor of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to immediately make effective additional safety regulations for the amusement industry. An ordinary administrative regulation is not sufficient due to the ordinary regulation promulgation process timeframe length and the current need for immediate animal safety regulations. With a current outbreak of vesicular stomatitis in western states and a large number of animals coming for events in Kentucky this fall, the regulation is needed now to protect animals from the disease. This emergency administrative regulation shall be replaced by an administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 2, 2010.

STEVEN L. BESHEAR, Governor
RICHIE FARMER, Commissioner

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health
(Emergency Amendment)

302 KAR 20:115E. Vesicular stomatitis.

RELATES TO: KRS 257.030, 257.230
STATUTORY AUTHORITY: KRS 257.030, 257.070
EFFECTIVE: July 2, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

Section 1. General Provisions. (1) Prohibited entry into Ken-

tucky.

(a) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any designated area or region in which vesicular stomatitis has been diagnosed. Any designated area or region shall be defined by the Kentucky State Veterinarian.

(b) Livestock, wild or exotic animals which have been in a vesicular stomatitis designated area or region shall not be permitted entry into Kentucky until they have been out of the designated area or region a minimum of twenty-one (21) days or the vesicular stomatitis designated area or region is released from restriction.

(c) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any state which does not have in place adequate requirements, as determined by the Kentucky State Veterinarian[~~chief livestock health official in Kentucky~~], governing the entry of the animals from states which have had vesicular stomatitis diagnosed.

(2) Vaccination.

(a) Livestock, wild or exotic animals in Kentucky shall not be vaccinated with an autogenous vesicular stomatitis virus vaccine without approval of the Kentucky State Veterinarian[~~and issued a conditional license by the United States Department of Agriculture's Animal and Plant Health Inspection Service~~].

(b) Livestock, wild or exotic animals which have been vaccinated with an autogenous vesicular stomatitis virus [~~vaccine and issued a conditional license by the USDA's Animal and Plant Health Inspection Service~~] shall not be permitted entry into Kentucky without approval of the Kentucky State Veterinarian.

(3) Testing. The Kentucky State Veterinarian may prescribe USDA approved testing as is deemed necessary to protect Kentucky's Livestock populations and industries based on extent of outbreak in the defined area(s), species affected, geographic region, and purpose of entry into Kentucky. The requirements for entry shall be posted on the Kentucky Department of Agriculture's web pages and shall include the prescribed testing assay, time testing is to be completed and all other relative information pertaining to entry into Kentucky.

(4) If testing is required,[~~All equidae, including suckling foals, originating from a state which has a common border with a state in which vesicular stomatitis has been diagnosed, shall be negative to either a serum neutralization test, a complement fixation test, or a C-ELISA test for a vesicular stomatitis as directed by the Office of the Kentucky State Veterinarian within ten (10) days prior to the animal's entry into Kentucky.~~] the certificate of veterinary inspection shall include the following:

(a) Testing laboratory;

(b) Test date;

(c) Accession number;

(d) Type of test and test results; and

(e) Complete name, address, city and state of both the consignor and consignee.

(4) Other requirements. All other entry requirements as found in 302 KAR 20:040 shall be met in full.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 30, 2010

FILED WITH LRC: July 2, 2010 at 11 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation changes requirements for entry into Kentucky which have been exposed to vesicular stomatitis.

(b) The necessity of this administrative regulation: To prevent entry of vesicular stomatitis into Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the entry requirements for animals that may have been exposed to vesicular stomatitis.

(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: Allows designation of areas or regions for VS, and reduces the time period for animals originating from areas where VS has been found.

(b) The necessity of the amendment to the administrative regulation: To prevent entry of vesicular stomatitis into Kentucky.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

(d) How will this amendment assist in the effective administration of the statutes: This amended regulation makes clear the entry requirements for animals that may have been exposed to vesicular stomatitis.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all persons wishing to enter animals into Kentucky from an area where VS has been found. As this disease is sporadic in nature, it is impossible to guess the number of persons that would be affected. The probability for this to affect the average animal moving into Kentucky is very low.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will be required to test should the OSV require them to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will not incur costs unless required to do so for entry. The OSV estimates a test to cost $15.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance to Kentucky Agriculture are immeasurable. Should VS be allowed to enter the state, tremendous loss to all animal values in the state.

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

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Agriculture

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 257.030, 257.070

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

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

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
302 KAR 21:005E

Pursuant to KRS 13A.190, the Governor of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to immediately make effective additional safety regulations for the amusement industry. An ordinary administrative regulation is not sufficient due to the ordinary administrative regulation promulgation process timeframe length and the current need for immediate animal safety regulations. With a large number of animals coming for events in Kentucky this fall, the administrative regulation is needed now to protect animal health. This emergency administrative regulation shall be replaced by an administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 2, 2010.

STEVE BESHEAR, Governor
RICHIE FARMER, Commissioner

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health
(New Emergency Administrative Regulation)

302 KAR 21:005E. Animal diseases to be reported.

RELATES TO: KRS 257.020, 257.030, 257.080

STATUTORY AUTHORITY: KRS 257.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 requires the Kentucky Department of Agriculture to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and set out the conditions under which the diseases shall be reported. This administrative regulation sets forth a comprehensive list of reportable diseases and the conditions under which the diseases shall be reported.

Section 1. Duty To Notify. Every veterinarian, veterinary practice and personnel; veterinary diagnostic laboratory and personnel; laboratory providing animal diagnostic services for Kentucky; owner of animals; persons associated with any equine, livestock, poultry, or fish; sales or event establishment and personnel; transportation provider; slaughter facility and personnel; or any other person having knowledge of the existence of any reportable disease, as provided in Section (2) of this administrative regulation, shall immediately report said disease or condition to the State Veterinarian. All laboratories providing diagnostic services for Kentucky equine, livestock, poultry, or fish shall give notification pursuant to Section 3 of this administrative regulation.

Section 2. Diseases That Must Be Reported. (1) The following diseases and conditions must be immediately reported to the State Veterinarian:

(a) United States Animal Health Association Foreign Animal Diseases,

(b) The World Organization for Animal Health (OIE) Listed Diseases,

(c) Botulism,

(d) Burkholderia pseudomallei,

(e) Caseous lymphadenitis,

(f) Chronic Wasting Disease,

(g) Clostridium perfringens epsilon toxin,

(h) Coccidiodes immitis,

(i) Menangle virus,

(j) Plague (Yersinia pestis),

(k) Plant and chemical toxicosis,

(l) Scabies,

(m) Shigatoxin,

(n) Staphylococcal enterotoxins,

(o) Strangles (Streptococcus equi equi), and

(p) Swine influenza virus

(2) Conditions of unknown etiology that meet any of the following criteria must be reported immediately:

(a) Abortion storms in livestock/equine of unknown etiology,

(b) Undiagnosed central nervous system conditions,

(c) Unusual number of acute deaths in livestock/equine, poultry, fish, or

(d) Highly infectious conditions of any etiology, known or unknown.

Section 3. (1) The notification shall be given to the Office of the State Veterinarian, Kentucky Department of Agriculture, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, telephone (502) 564-3956, fax (502) 564-7852.

(2) The person reporting shall furnish the:

(a) Name, address, and telephone number of the owner of the equine, livestock, poultry, or fish.

(b) Animal species, breed, age, sex, how many affected, and clinical signs;

(c) Premises address for the animal(s) tested or affected;

(d) Name, address, and telephone number of veterinarian submitting the case; and

(e) Name and address and phone of person reporting.

(3) A report submitted to the State Veterinarian by a diagnostic laboratory of a condition suspected or diagnosed by a test result or other laboratory procedure from the laboratory shall constitute notification on behalf of the laboratory and the submitting veterinarian or owner.

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

(a) USAHA Seventh Edition of Foreign Animal Diseases, Revised 2008. This publication may also be found at http://www.usaha.org/pubs/#FAD.

(b) The World Organisation for Animal Health (OIE) Listed Diseases. This list may also be found at http://www.oie.int/eng/maladies/en_classification2010.htm?e1d7.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 30, 2010

FILED WITH LRC: July 2, 2010 at 11 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the list for all reportable diseases and how to contact the State Veterinarian.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.080.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by promulgating who must report diseases, which diseases must be reported, and the conditions under which the diseases shall be reported.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the reporting requirements for diseases of livestock, poultry, and fish in the state.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: Kentucky Department of Agriculture and veterinarian, veterinary practice personnel; veterinary diagnostic laboratory personnel; laboratory providing animal diagnostic services for Kentucky; owner of animals, persons associated with any equine, livestock, poultry, or fish, sales or event establishment owners or employees; transportation provider; slaughter facility; auctioneer or any other person having knowledge of the existence of any reportable disease.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will be required to report a reportable disease which they discover or notice a reportable disease.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will not incur costs other than the time needed to call or fax the reportable disease to the State Veterinarian.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance to Kentucky Agriculture are immeasurable. Should a quarantine be avoided due to quick disease response the value of animals would be maintained.

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

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Agriculture

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.080

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 by this regulation.

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
702 KAR 7:130E

2010 HB 1, which was passed during the 2010 special legislative session, requires the Kentucky Board of Education to promulgate a regulation for uniform procedures for approval of alternative, innovative school calendars by the Commissioner of Education, effective immediately. The bill requires this process to be in place prior to the approval of any calendar for the 2010-2011 school year. An emergency regulation is necessary to enable the Commissioner of Education and the Kentucky Department of Education to immediately provide a process and technical assistance for approval of alternative, innovative school calendars as well as approval of traditional calendars before June 30, 2010 as required by 702 KAR 7:140. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVE BESHEAR, Governor
TERRY HOLLIDAY, Ph.D., Commissioner

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Emergency Amendment)

702 KAR 7:130E. Approval of innovative alternative school calendars.

RELATES TO: KRS 157.320, 157.350, 158.060, 158.070, 2010 HB 1, part I, C, 3(17)[~~2008 Ky Acts ch. 127, Part I, D, 4, (14)~~]

STATUTORY AUTHORITY: 2010 HB 1, part I, C, 3(17)[~~2008 Ky Acts ch. 127, Part I, D, 4, (14)~~]

EFFECTIVE: June 23, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 HB 1, part 1, C, 3(17)[~~2008 Ky Acts ch. 127, Part I, D., 4., (14)(c)~~] requires the Kentucky Board of Education to establish by administra-

tive regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars.

Section 1. (1)(a) A local board of education may request approval of an innovative alternative school calendar for the 2010-2011[~~2008-2009~~] school year or the 2011-2012[~~2009-2010~~] school year by submitting a written request to the Commissioner of Education.

(b) All calendars that contain less than 170 six (6) hour instructional days shall be considered innovative alternate calendars and shall be submitted to the Commissioner of Education for approval.

(2) The request shall:

(a) Be signed by the superintendent and board of education chairperson;

(b) Contain a specific explanation of the reason for the request; and

(c) Include the following information:

1. How the alternative calendar will improve teaching and learning in the district;

2. How 1,062 hours of instruction will be included in the calendar;

3. The structure of any instructional days that are less than six-hours in length; and

4. A description of how the alternative calendar will provide for professional learning situations designed to improve instructional practices that will enhance student learning.

Section 2. (1) A request for approval of an innovative alternative school calendar shall be submitted to the Commissioner of Education no later than June 30 preceding the school year for which the request is submitted.

(2) The commissioner shall approve the request upon a determination that:

(a) The requirements established in Section 1(2) of this administrative regulation have been met; and

(b) The alternative calendar is designed to improve teaching and learning in the district.

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).

TERRY HOLLIDAY, Ph.D., Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: June 15, 2010
FILED WITH LRC: June 23, 2010 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes new requirements for innovative alternative school calendars per 2010 HB 1, part I, C, 3(17).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 158.060; 158.070; and 2010 HB 1, part I, C, 3(17) that set forth the requirements for innovative alternative school calendars to be used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for innovative alternative school calendars required in KRS 158.060; 158.070; and 2010 HB 1, part I, C, 3(17).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics regarding how innovative alternative school calendars are to be submitted by local school districts per KRS 158.060; 158.070; and 2010 HB 1, part I, C, 3(17) to the Kentucky Department of Education for commissioner 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: The change will allow school districts and the KDE more flexibility in the selection and approval of innovative alternative school calendars.

(b) The necessity of the amendment to this administrative regulation: Approval of 702 KAR 7:140 should result in clearer guidance to local districts at they apply the new guidance for innovative alternative school calendars set forth in 2010 HB 1, part I, C, 3(17).

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes by providing specific guidance for school districts that clarifies the approval process for innovative alternative school calendars set forth in 2010 HB 1, part I, C, 3(17).

(d) How the amendment will assist in the effective administration of the statutes: The emergency changes to the regulation whereby a local board of education may request approval of an innovative alternative school calendar for the 2010-2011 school year or the 2011-2012 school year.

(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.

(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: Local boards of education are required to adopt a school calendar for the upcoming school year prior to May 15 of each year. 2010 HB 1, part I, C, 3(17) requires the Kentucky Board of Education to establish by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars. All calendars that contain less than 170 six-hour instructional days shall be considered innovative alternate calendars and shall be submitted to the Commissioner of Education for approval no later than June 30 preceding the school year for which the request is submitted.

(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: School districts will abide by the requirements set forth. Kentucky Department of Education staff will continue to process requests submitted by school districts for Commissioner approval.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will submit innovative alternative school calendars that meet statutory requirements.

(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: No additional funding is necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or 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. 2010 HB 1, part I, C, 3(17); KRS 158.060; and 158.070.

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. There will be no additional revenue generated by this administrative regulation.

(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:

STATEMENT OF EMERGENCY
902 KAR 30:001E

This emergency administrative regulation, 902 KAR 30:001E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The U.S. Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the U.S. Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the U.S. Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:001E. [~~Kentucky Early Intervention Program~~] Definitions.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: [~~The Cabinet for Health Services is directed by~~] KRS 200.650 to 200.676 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulation pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility in First Steps to identify the child's unique strengths and needs, and the services appropriate to meet those needs; and the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.[~~activities completed to develop a service plan for an eligible child and his family;~~]

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan;

(3) "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device.

(4) "Child find" is[~~means~~] as defined by[~~in~~] KRS 200.654(3).[~~;~~

~~(4) "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm referenced test. It is not an extrapolated score based on a screening test;~~]

(5) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.[~~;~~]

(6) "Disciplines" means those professionals recognized by First Steps to practice in early intervention services.[~~;~~]

(7) "District Early Intervention Committee" or "DEIC" is[~~means as~~] defined by[~~in~~] KRS 200.654(6).[~~;~~]

(8) [~~"District technical assistance team" means a professional and a parent of a child with a disability combined staffing unit for the purpose of providing technical assistance, training, and support to families and providers in the local community;~~

~~(9)~~] "Early intervention services" is[~~means as~~] defined by[~~in~~] KRS 200.654(7).

(9)[~~;~~

~~(10)~~] "Early intervention team" means two (2) or more disciplines providing services to a child and family which employ any one (1) of the team models that include a multidisciplinary team.

(10) "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.[~~;~~]

(11) "Evaluation" means the use of [~~standardized norm-referenced~~] procedures to determine eligibility for First Steps services.[~~;~~]

(12) "Family centered" means practices that are driven by the families priorities and concerns; support the family's role as[~~the recognition that the family is~~] the constant in a child's life; complement a family's natural activity settings and daily routines, and [~~that services and personnel must~~] support, respect, encourage, and enhance the strengths,[~~strength and~~] competence, and confidence of the family.[~~;~~]

(13) [~~"Family directed" means the recognition that a family has choices and that services are provided in accordance with the family's priorities, concerns, and values;~~

~~(14)~~] "First Steps" means Kentucky's early intervention system and is defined by[~~as defined in~~] KRS 200.654.

(14) "Homeless child" is defined by Pub.L. 107-110 Section 725(2) and (6) of the McKinney-Vento Homeless Assistance Act.[~~;~~]

(15) "Interdisciplinary team" means professionals of one (1) or more disciplines working together with an integrated approach to[~~cooperatively in~~] both planning and delivering services to the eligible child in accordance with the IFSP. [~~Emphasis is upon teamwork and interaction among team members who help and rely upon each other to provide well coordinated services, although each discipline ultimately delivers the services in its own domain.~~]

(16) "Image Consistency Kit" means the guidelines developed by the Interagency Coordinating Council Public Awareness committee for the purpose of ensuring that any use of the First Steps logo and other public awareness materials shall be consistent and in conformity with exact specifications set forth by the committee.[;]

(17) "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.[;]

(18) "Individualized family service[services] plan" or "IFSP" is[means as] defined by[in] KRS 200.654(9).[;]

(19) "Kentucky High Risk Hearing Registry" is[means as] defined by[in] KRS 213.046.[;]

(20) "Mentorship" is[means] a limited period of one (1) year of indirect supervision.[;]

(21) "Multidisciplinary team" is[means as] defined by[in] KRS 200.654(11).[;]

(22) "Natural environments" means settings, such as the home and the community, in which the child's age peers who have no disability normally participate.[;]

(23) "Parent" means:

(a) A natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by state law from serving as a parent);

(b) A guardian (but not the state if the child is a ward of the state);

(c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) Except as used in sections 615(b)(2) and 639(a)(5) of Pub.L. 108-446, an individual assigned under either of those sections to be a surrogate parent.

(24) "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by parent or legal guardian inclusive of disappearance;

(d) Change of residence to another[out of] state.

(25)[;

(24)] "Point of entry" or "POE" is[means as] defined by[in] KRS 200.654(12) and is also called the local lead agency;

(26)[(25)] "Prematurity" means[shall mean] a gestational age, at birth, of less than thirty-seven (37) weeks.

(27)[;

(26)] "Primary referral source" means those in the community who have the greatest opportunity, by virtue of their work, their relationship to children [of this age,] or their special knowledge[,] to refer a child to First Steps.

(28) "Primary service provider" means one (1) professional who is a member of the IFSP team selected as the team lead who provides regular support to the family.

(29)[;

(27) "Primary service coordinator" or "PSC" means the person responsible for coordination of services after the POE initial service coordinator has completed his responsibilities for IFSP development;

(28)] "Provider action" means actions or decisions by the First Steps staff, and actions or decisions made by service providers relating to the identification, evaluation, and placement of the child or the provision[provisions] of appropriate early intervention services.

(30)[(29)] "Qualified service provider" is[means as] defined by[in] KRS 200.654(13).

(31) "Referral" means a child identified between birth and three (3) years of age who is a Kentucky resident or a homeless child within the boundaries of the Commonwealth and is suspected of having an established risk diagnosis or a developmental delay as confirmed by the cabinet approved screening protocol.

(32) "State Technical Assistance Team" means a team consisting of early intervention professionals and at least one (1) parent of a child with a disability who assist the State Lead Agency by providing technical assistance, training, and support to the Points of Entry and families to assure that the early intervention system is meeting performance indicators and the needs of families.

(33) "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303 Part C of Individuals with Disabilities Education Improvement Act (IDEA) and KRS 200.650 to 200.676.

(34)[; (30) "Teratogen" means an agent causing fetal malformations.

(31)] "Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members.

(35) "Ward of the state" means a child who, as determined by the state where the child resides, is a foster child or is in the custody of a public child welfare agency, but does not include a foster child who has a foster parent who meets the definition of a parent in subsection (23) of this section.

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides definitions unique to the early intervention system as defined by Pub.L. 108-446, the Individuals with Disabilities Education Improvement Act.

(b) The necessity of this administrative regulation: 902 KAR 30:001 is necessary to define specific terminology used in the early intervention system.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650 requires that the Cabinet for Health and Family Services be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions: assistive technology devices and services, established risk, homeless child, parent, primary service provider, referral, and ward of the state. The amendment modifies the definitions of interdisciplinary team and regional technical assistance team. The amendment deletes the following definitions: developmental quotient, family directed, primary service coordinator, and teratogen.

(b) The necessity of the amendment to this administrative regulation: Assistive technology devices and services (34 C.F.R.303.12 (d) 1 and (34 C.F.R. 303.12 (d) (1) (i-vi) respectively), homeless child, parent (34 C.F.R. 303.19; Pub.L. 107-110 Section 725 (2) and (6)) and ward of state were added for compliance with federal funds in order to receive federal funding. The definition of referral was added to provide clarification of when the federally-mandated timeline begins. Some terminology was added for clarity and guidance. Developmental quotient, family directed, primary service coordinator, and teratogen were removed because these are terms no longer used in the early intervention system.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires compliance with federal law as it pertains to services for infants and toddlers with disabilities and their families.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers,

including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice. Individuals who previously performed the duties of Primary Service Coordinators have been hired by Points of Entry provider or enrolled in First Steps as another type of qualified providers or left the early intervention service system for employment in another field.

(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 to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for continued funding and participation in First Steps.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis: There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during 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? There will be no revenues generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal Statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart A-General list the definitions commonly used in early intervention services. As a recipient of federal Part C monies, Kentucky Early Intervention Services is mandated to fully comply with all federal statutes. The changes in the definitions bring KEIS into full compliance with this federal statute and are required for continued receipt of those funds.

2. State compliance standards.KRS 200.650 charges the Cabinet for Health and Family Services and the Department for Public Health to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding definitions the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements

STATEMENT OF EMERGENCY
902 KAR 30:110E

This emergency administrative regulation, 902 KAR 30:110E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The US Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the US Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the US Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:110E. [~~Kentucky Early Intervention Program~~] Point of Entry and service coordination.

RELATES TO: KRS 200.650-200.276, 20 U.S.C. 1471-1485
STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)[~~, EO 2004-726~~]
EFFECTIVE: July 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 250.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation sets forth the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child find efforts with local education agencies in order to insure compliance with child find mandates by each entity; and other state and federal programs serving this population. These include, but are not limited to:
(a) Maternal and child health programs;
(b) Early and periodic screenings, diagnosis, and treatment (EPSDT) programs;
(c) Head Start;
(d) Homeless shelters;
(e) Supplemental Security Income (SSI) programs; and
(f) Programs authorized through 42 U.S.C 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.
(2) The POE staff shall develop a child find activity plan approved by the Part C Coordinator to be conducted in each district.
(3) The POE staff shall maintain accessibility and provide public awareness activities in each district as required by the cabinet.
(4) The POE staff shall maintain communication with the District Early Intervention Council (DEIC), state lead agency, and state technical assistance staff on matters of child find, service options, and other issues relevant to the First Steps Program.
(5) The POE staff shall accept all inquiries for First Steps services to determine eligibility for programs.
(a) Upon receiving a telephone or written inquiry, POE staff shall determine if:
1. The family is aware that an inquiry is being made; and
2. The referral is appropriate based on:
a. The child's age shall be between birth and three (3) years old;
b. The family's residence within the assigned district or that the family is homeless; and
c. An established risk diagnosis or a developmental concern that is confirmed by administration of the cabinet approved screening protocol.
(b) If the initial screening finds the referral to be inappropriate, the POE shall:
1. Provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:
a. Public schools;
b. The Department for Community Based Services;
c. Medical services; or
d. Other appropriate community services; and
e. Another POE if residency alone is the reason for an inappropriate referral.
2. Provide a parent with notice of action refused in accordance with 34 C.F.R. 303.403(b).
(c) If it is determined that the referral is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days of receipt of referral.
(d) If the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.
(e) If a family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall:
1. Document in the child's record the refusal of services; and
2. Send a letter to the referral source explaining refusal of services by the family.
(f) If efforts to contact the family by telephone or in writing fail, the POE staff shall send a follow-up letter to the family within ten (10) working days of the referral.
(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral if known at that time.
(6) All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but will connect the parent or guardian with the local education agency, or other community resource.
(7) The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested.
(8) The POE staff shall provide a written monthly data report as defined by the state lead agency to the DEIC.
(9) The POE staff shall collect and maintain the District Service Provider Directory and shall provide information to the cabinet on a regular basis.

Section 2. Service Coordination. (1) The service coordinator shall:
(a) Serve as the main point of contact in helping families obtain the services and assistance they need;
(b) Complete the core service coordination training prior to the initiation of service delivery; and
(c) Complete all training as required by the Cabinet for Health and Family Services within the specified timeline.
(2) During the initial visit to the family, the service coordinator shall:
(a) Identify the purpose of the visit;
(b) Explain the First Steps service delivery system;
(c) Explain the family rights by reviewing the Family Rights Handbook and the statement of assurances;
(d) Obtain the signature of a parent or guardian on the statement of assurances;
(e) Request the release of information from a parent or guardian for medical or developmental information, risk indicators, other diagnostic, or hearing test results;
(f) Determine the willingness of the family to participate in First Steps services or refusal of services;
(g) Interview family and other individuals identified by the parents who are significant in the child's life and document findings relating to:
1. The child's developmental status;
2. The pregnancy, birth, and health information;
3. Social relationships; and
4. Context for learning, including the family's history, resources, priorities, and concerns.
(h) Conduct the routines based interview to determine daily routines and activities, the family's satisfaction level with these routines, and the family's desired outcomes.
(i) Determine the next action needed with the family to determine eligibility of the child;
(j) Discuss evaluation and service options;
(k) Establish the potential date for developing an Individual Family Service Plan (IFSP);
(l) Discuss the role of the service coordinator; and
(m) Collect insurance information and data necessary for billing.
(3) The service coordinator must:

(a) Notify parents, in accordance with the parental prior notice requirements of 34 C.F.R. 303.403, and all the IFSP team members in writing of the initial and annual Individual Family Service Plan (IFSP), six (6) month review, and any other IFSP team meeting or the transition conference date and location no less than fourteen (14) calendar days prior to the IFSP, review, or transition conference date.

1. If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting;

(b) Facilitate the initial, annual and, six (6) month review IFSP meetings and IFSP meetings requested to address revisions; and

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) days of the meeting and provide copies to persons identified and consented to by the family;

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130 Section 2(7)(i); and

5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.

(4) The service coordinator shall inform the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards and due process rules, and ensuring that the family reviews and signs the statement of assurances found in the Family Rights Handbook at every IFSP review;

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district, including recent rules regarding funding sources;

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family;

(c) Making the family aware of community activities that would benefit from their participation, such as becoming a member of the District Early Intervention Committee; and

(d) Assisting the Point Of Entry (POE) in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.

(6)The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8) The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.

(9) If a family desires a change in their service coordinator, they shall contact the POE and the POE shall seek to resolve the situation.

(10) The service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as outlined in 902 KAR 30:130, and ensuring that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

(b) Holding a transition conference at least ninety (90) days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the Part B local school district representative, and staff from potential next placement options; and

(c) Including at least one transition outcome as a part of every IFSP that is supported by steps.

(11) The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within seven (7) days of the date of service and include:

(a) The date of contact;

(b) Amount of time spent;

(c) Reason for contact;

(d) Type of contact whether by telephone or face to face;

(e) Result of contact; and

(f) Plan for further action.

(12) Service coordinator shall document notes on the First Steps data management system all contacts attempted but not made, and the reason if services were not delivered in a timely manner.

(13) The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(14) If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.403 to the family which includes what services are terminating, and the date services will terminate, within seven (7) working days after notice from the family of their choice to end services.

(15) If the family is absent from a scheduled service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the service coordinator within seven (7) working days after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, send a letter within seven (7) working days to the providers with the result of the discussion; or

2. If no contact is made, send the family a letter within seven (7) working days:

a. Requesting direction as to the choice of the family in continuation of services;

b. Stating that the service will be discontinued until a choice is made by the family by contacting the service coordinator; and

c. Stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.

(16) The service coordinator shall be responsible for securing any release of information necessary to send or secure information, upon request from other service providers, including non First Steps providers involved in the care of the child.

(17)The service coordinator shall provide data to the cabinet upon request.

(18) The service coordinator shall limit practice in First Steps to service coordination only.

Section 3. Determination of Child's Hearing Status. (1) All children referred to First Steps will have a verbal risk assessment performed for suspected hearing impairments prior to the initial IFSP meeting. For a birth to three (3) year old child who:

(a) Is "at risk" as indicated in Kentucky CHILD and confirmed by the Early Hearing Detection and Intervention Data Base and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological evaluation has been performed, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(b) Is suspected of having a hearing problem, but not suspected of having any developmental problems, the family or guar-

dian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(c) Has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970.

Section 4. Incorporation by Reference. The following materials are incorporated by reference:

(1) "Family Rights Handbook", July 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~The point of entry (POE) staff shall coordinate child-find efforts with local education agencies in order to insure compliance with child find mandates with each party.~~

~~(2) The POE staff shall coordinate child find efforts with other state and federal programs serving this population, including maternal and child health programs, early and periodic screening, diagonal-sis, and treatment programs, Head Start, Supplemental Security Income Program, and programs authorized through 42 U.S.C. 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.~~

~~(3) The POE staff shall develop a child-find activity plan to be conducted in each district that includes:~~

~~(a) Completing a minimum of two (2) face-to-face contacts per month to potential referral sources in the district to explain First Steps services.~~

~~(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them avail-able to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).~~

~~(4) The POE staff shall maintain accessibility and provide public awareness activities in each district by:~~

~~(a) Having a district toll free telephone number;~~

~~(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps; and~~

~~(c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.~~

~~(5) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:~~

~~(a) Presenting a report at each DEIC meeting that includes the following information:~~

~~1. Number of referrals and referral sources since last DEIC meeting;~~

~~2. List of current service providers including deletions and additions from last meeting;~~

~~3. Report on identified gaps related to services and location; and~~

~~4. A highlight of the month's activities that include the public awareness activities; and~~

~~(b) Soliciting advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.~~

~~(6) The POE staff shall act on all referrals for First Steps services.~~

~~(a) Upon receiving a telephone or written referral, POE staff shall:~~

~~1. Determine if the family is aware that a referral is being made; and~~

~~2. Do an initial screening to determine if the referral is appropriate based on:~~

~~a. Establishing that the child's age is between birth and three (3) years old;~~

~~b. Ensuring the family's residence is within the assigned district; and~~

~~c. Confirming that there is a developmental concern or a suspected established risk diagnosis.~~

~~(b) If the initial screening finds the referral to be inappropriate, the POE shall give the referral source the appropriate resource to refer the child and family to the services that meet that child's needs. These resources include:~~

~~1. Public schools;~~

~~2. The Department for Community Based Services;~~

~~3. Medical services; or~~

~~4. Another POE.~~

~~(c) If it is determined that the referral, is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days for the purpose of:~~

~~1. Briefly informing them of First Steps' services;~~

~~2. Advising them that all services are voluntary; and~~

~~3. Ascertaining whether the family would like more information and an initial visit scheduled; and~~

~~4. Administer the Department for Public Health approved screening test.~~

~~(d) If a family is interested, the POE staff shall schedule a visit and send the family a letter to confirm the date, time and location of the visit.~~

~~(e) If a family is not interested, the family shall be informed by the POE staff that they can contact the POE at any time to reinstate the referral and the POE staff shall:~~

~~1. Document in the child's record, the refusal of services; and~~

~~2. Send a letter to the referral source explaining refusal of services by the family.~~

~~(f) If efforts to contact the family by telephone and in writing fail, in order to bring closure to the referral the POE staff shall send a follow-up letter within ten (10) working days of the referral encouraging the family to contact the POE at anytime to:~~

~~1. Initiate services; or~~

~~2. To ask further questions.~~

~~(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at the time.~~

~~(7) At the initial visit to the family, the POE staff shall:~~

~~(a) Identify the purpose of the visit;~~

~~(b) Explain the First Steps services;~~

~~(c) Explain the family rights by giving the family the "Family Rights Handbook" and review the statement of assurances;~~

~~(d) Obtain the signature of a parent on the statement of assurance;~~

~~(e) Obtain release of information for medical or developmental information from parent;~~

~~(f) Determine the willingness to participate in First Steps services or refusal of services;~~

~~(g) Interview family and other individuals identified by the parents who are significant in the child's life and record findings to help record the child's developmental status, social relationships and contexts for learning, including the family's history, resources, priori-ties, concerns, patterns, daily routines and activities;~~

~~(h) Determine the next action needed with the family to the determine eligibility of the child;~~

~~(i) Discuss evaluation and service options that include:~~

~~1. Family convenience and preference;~~

~~2. Funding sources; and~~

~~3. Natural environments;~~

~~(j) Establish the potential date for developing an Individualized Family Service Plan (IFSP);~~

~~(k) Discuss options for a primary service coordinator; and~~

~~(l) Collect data necessary for billing.~~

~~(8) All children referred to First Steps because of suspected developmental delay or established risk condition shall have the hearing checklist completed prior to the initial IFSP meeting.~~

~~(9) The POE staff shall use the following to assist in the determination of hearing status:~~

~~(a) If the referral is a birth to three (3) year old child who is "at risk" as indicated on the Kentucky High Risk Hearing Registry and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological screen has been done, the child and family shall be notified to contact their pediatrician or a clinic for an audiological screen to determine hearing status.~~

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

~~(c) If the referral is a birth to three (3) year old child with a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.~~

~~(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation.~~

~~(e) If a birth to three (3) year old child is referred because of suspected developmental delay or established risk condition, but no apparent hearing problems, the POE shall complete the hearing checklist prior to the IFSP meeting.~~

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

~~The POE staff shall:~~

~~(a) Gather existing documentation that will be used to determine eligibility; and~~

~~(b) ensure that all releases are completed and on file.~~

~~(11) The POE staff shall make appropriate referrals to secure needed evaluations of the child's medical and developmental status.~~

~~(12) The POE staff shall ensure that referrals for needed assessments are made, the assessments are completed and that those reports shall be made available prior to the initial IFSP.~~

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

~~(b) The POE staff shall request copies of the completed assessment reports to be included in the child's record and used in the development of initial IFSP.~~

~~(c) The POE staff shall send all future assessment reports to the primary service coordinator.~~

~~(13) The POE staff shall coordinate and ensure completion of the initial individualized family service plan (IFSP) meeting within the federally mandated time line of forty-five (45) calendar days from receipt of referral.~~

~~(a) The POE staff shall assist the family in identifying the IFSP team members and discuss a potential primary service coordinator.~~

~~(b) Once a potential primary service coordinator has been suggested, the POE staff shall contact that person and confirm his willingness to function as the primary service coordinator.~~

~~(c) After releases of information signed by the parent have been obtained, the POE staff shall send copies of the following information to the requested primary service coordinator:~~

~~1. Initial referral information;~~

~~2. Developmental and social history;~~

~~3. Any available evaluation reports; and~~

~~4. Any available assessment reports.~~

~~(d) The POE staff shall send notices to all identified IFSP team members of the upcoming IFSP meeting date, time, and location.~~

~~(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:~~

~~1. Confirm the time and place of the meeting;~~

~~2. Determine whether transportation is needed;~~

~~3. To reiterate the purpose of meeting; and~~

~~4. To answer questions.~~

~~(f) If the developmental and medical evaluators, family, and POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held. If any one (1) member disagrees or still has concerns, a meeting shall be held.~~

~~(g) The POE staff shall facilitate the initial IFSP meeting by:~~

~~1. Leading introductions;~~

~~2. Reviewing the purpose of the meeting;~~

~~3. Explaining the family rights and responsibilities for participation, the array of services currently available, and the service delivery approaches which include family centeredness, natural environments and transdiciplinary services; and~~

~~4. Discussing and leading the IFSP team to verify eligibility based on collected documentation.~~

~~a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.~~

~~b. If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can recontact the POE any time for reevaluation.~~

~~c. If the child is eligible and the family is interested in services, the POE staff shall:~~

~~(i) Develop an IFSP ensuring that all IFSP components are included; and~~

~~(ii) Introduce the primary service coordinator.~~

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

~~(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;~~

~~(j) The POE staff shall, within five (5) working days of the IFSP meeting, make available, through appropriate releases, to the primary service coordinator the following:~~

~~1. The completed IFSP;~~

~~2. Any evaluation reports not previously sent; and~~

~~3. Any assessment reports not previously sent.~~

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

~~(l) The POE staff shall send the necessary documentation of service decisions to the billing agent within five (5) working days after the IFSP meeting.~~

~~(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.~~

~~(14) The POE staff shall:~~

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

~~(b) Keep on file copies of all IFSP and reviews sent from the primary service coordinator;~~

~~(c) Assist primary service coordinators in transition of children from First Steps services to future services; and~~

~~(d) Track and notify the primary service coordinator that a transition conference shall be completed within the federal time frame of no less than ninety (90) days prior to the child's third (3) birthday by:~~

~~1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held; and~~

~~2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days, after the meeting has been held. This plan shall include at least:~~

~~a. Basic demographic information;~~

~~b. A listing of family priorities;~~

~~c. Family resources and concerns; and~~

~~d. Documentation of the transition meeting and outcomes.~~

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

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

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

~~2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 1/2) months for evaluation and First Steps services.~~

~~(b) For all children who are two (2) years and ten and one-half (10 1/2) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.~~

~~(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.~~

~~(16) If the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.~~

~~(17) The POE staff shall maintain a complete record on all children referred through the POE by:~~

~~(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;~~

~~(b) Ensuring that all POE contacts shall be documented in the child's record;~~

~~(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and~~

~~(d) Providing data to the lead agency as requested.~~

~~(18) The POE shall provide a written data report to the DEIC. The POE shall complete the district data report monthly. The information to be included in the report shall be the:~~

~~(a) Number of referrals per quarter;~~

~~(b) Sources of referrals;~~

~~(c) Number of eligible children;~~

~~(d) Eligibility categories and number of children in each category;~~

~~(e) Number of children not eligible;~~

~~(f) Number of children or families refusing services;~~

~~(g) Number of IFSP's completed;~~

~~(h) Number of children who received primary, intensive and tertiary evaluations; and~~

~~(i) Age of each child at the time of referral.~~

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

~~The POE shall:~~

~~(a) Collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community; and~~

~~(b) Send a compiled list of changes to their district technical assistance team quarterly.~~

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

~~(a) Hearing Checklist, 1999; and~~

~~(b) Family Rights Handbook, January 2005.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Fri-day, 8:00 a.m. to 4:30 p.m.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance and requirements for the Point of Entry (POE). The Point of Entry is the local lead agency that is responsible for processing all referrals to the Kentucky Early Intervention System and is responsible for ongoing record keeping and service coordination activities.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators and other POE staff. Service coordination is the one service all eligible children receive. POE agencies house all service coordinators, providing not only the work environment but also the supervision of service coordinators. The POE agencies are the local lead agency for the Kentucky Early Intervention System and are the agencies that are monitored by the Department for Public Health.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 (2)-(6) requires that there be an operational early intervention system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this regulation remove obsolete language and procedures. Additional guidance is provided for clarity.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to fully comply with federal regulations found at 34 C.F.R. 303 and so that regulation reflects current practice and program reorganization.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor as required by 34 C.F.R. 303.501. POEs are the state's local lead agency that serves as the entity to carry out all functions related to serving children and families. Current state performance status reflects the lack of clear lines of supervision with service coordination and other service providers. Program reorganization was implemented to address these weaknesses and thus, state performance will be enhanced by this streamlined chain of responsibility and supervision. Also, regulations will now reflect the current practices and tools (such as the online data/child's record system) thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including POE staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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 early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars. Program reorganization moved service coordination to a fixed-cost which will result in approximately $1-2 million dollar savings to the state. Changes to assessment represent an elimination of unnecessary and costly requirements, resulting in additional cost reductions to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. The level of responsibility and authority of the POE will greatly affect performance improvement and compliance with federal regulations.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No continuing costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have an estimated $1-2 million savings to the program.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 outlines the states requirements for implementing early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.650 to 200.676 charges the Cabinet for Health and Family Services, Department for Public Health to implement early intervention services and comply fully with federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
902 KAR 30:120E

This emergency administrative regulation, 902 KAR 30:120E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The U.S. Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the U.S. Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the U.S. Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:120E. [~~Kentucky Early Intervention Program~~] Evaluation and eligibility.

RELATES TO: KRS 200.654, 34 C.F.R. 303.11, 303.300, 303.322, 20 U.S.C. 1471-1476

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 200.650-676, 34 C.F.R. 303.322, 20 U.S.C. 1474, 1475(a)(10)[~~, EO 2004-726~~]

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726 reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation,[~~and~~] eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Eligibility. (1) A child shall be eligible for First Steps service if the child:

(a) Is age birth through two (2) years;

(b) Is a resident of Kentucky at the time of referral and resides in Kentucky while receiving early intervention services; and

1. Has a documented established risk condition that has a high probability of resulting in developmental delay, or

2. Is determined to have a significant developmental delay

based on the evaluation and assessment process.

(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral that meets the criteria of subsection (1) of this section.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible when the diagnosis is confirmed by a physician and documented in the medical records provided to the First Steps Program.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment completed by a developmental evaluator using a cabinet-approved criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a developmental evaluator.

(4) Eligibility by developmental delay:

(a) A child meeting the criteria in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development; and

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (4)(b) of this section:

1. A more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay may be greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of this alternate testing shall determine the child's eligibility if the standardized scores indicate a delay of greater than two (2) standard deviations.

(5) Eligibility by professional judgment: A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team;

(b) An approved intensive level evaluation team; or

(c) The designated record review team, when reviewing for eligibility.

Section 2. Child Evaluation. (1) A child referred to the First Steps Program who meets the criteria in Section 1(1)(a) and (b) of this administrative regulation shall receive an evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; and

(b) The child does not have an established risk diagnosis.

(2) For a child without an established risk diagnosis, the primary level evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations for the Individual Family Service Plan (IFSP) outcomes.

(3) Primary level evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument. The primary level evaluation shall include:

(a) A medical component completed by a physician or nurse practitioner that includes a:

1. History and physical examination;

2. Hearing and vision screening; and

3. Recent medical evaluation in accordance with the timelines established in Section 2(5) of this administrative regulation.

(b) A developmental component completed by a cabinet-approved primary level evaluator that includes:

1. A review of pertinent health and medical information;

2. Completion of appropriate instrument(s) to determine the child's unique strengths and needs; and

3. A recommendation of eligibility.

(c) Results of the evaluation should be explained to the family.

(d) An evaluation report shall be written in accordance with established timelines and shall be written in clear, concise language that is easily understood by the family.

(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (5) of this section; and

(b) The records contain the developmental evaluation information required by subsection (3)(a) and (b) of this section.

(5) If there is a recent medical or developmental evaluation available, as described in subsection (3)(a) and (b) of this section, it shall be used to determine eligibility if for children:

(a) Under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or

(b) Twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps.

(6) A child referred to First Steps program that was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.

(a) For a child who is less than six (6) months corrected age, the primary evaluation shall be done at an approved Intensive Level Clinic and preferably the approved Neonatal Intensive Care Unit follow-up clinic.

(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.

(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if the child does not meet eligibility guidelines at the primary level, but the primary level evaluator and a parent or guardian have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

(9) Should the record review team request an Intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall

include the following:

(a) A board certified medical professional with expertise in early childhood development;

(b) A board certified developmental pediatrician;

(c) A pediatrician who has training and experience in the area of early childhood development;

(d) A board certified pediatric psychiatrist; or

(e) A board certified pediatric neurologist; and

(f) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).

Section 3. Annual Redetermination of Eligibility. (1) Redeterminations of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the result of the most recent semi-annual progress review demonstrates:

(a) An ongoing delay or failure to attain an expected level of development
in one or more developmental areas; and

(b) Continued First Steps services are required in order to support continuing developmental progress by consensus of the IFSP team.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) If a person or persons directly involved in conducting the evaluation and assessments are unable to attend an IFSP meeting, arrangements shall be made for their involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making pertinent records and reports available at the meeting.

Section 4. Incorporation by Reference. (1) "The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility if:~~

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

~~b. The screen does not indicate a delay, but the family still has concerns; and~~

~~2. The child does not have an established risk condition.~~

~~(b) A child with established risk as listed in Section 2(3)(b) of this administrative regulation shall receive a five (5) area assessment done by a primary level evaluator in lieu of a primary level evaluation. If a child is eligible due to an established risk condition of hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a primary level evaluator.~~

~~(2)(a) A determination of initial eligibility pursuant to Section 2 of this administrative regulation, assessments in the identified area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral.~~

~~(b) If a determination of initial eligibility, assessments and initial IFSP team meeting does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.~~

~~(c) If a family is referred for a determination of initial eligibility and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility.~~

~~(3) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if:~~

~~(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and~~

~~(b) The records contain the developmental evaluation information established in subsection (11)(a) and (b) of this section.~~

~~(4) The primary level evaluation shall be utilized to determine eligibility of children without established risk, developmental status and recommendations for further assessment to determine program planning.~~

~~(a) If there is a previous primary level evaluation available, it shall be used to determine eligibility if:~~

~~1.a. For children under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or~~

~~b. For children twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps; and~~

~~2. There is no additional information or the family has not expressed new concerns that would render the previous evaluation no longer valid.~~

~~(b) If there is a previous primary level evaluation available that was performed within the timeframes established in paragraph (a)1 of this subsection but there are new concerns that render the evaluation no longer valid, the initial service coordinator shall request a new primary level evaluation.~~

~~(c) Primary level evaluations shall provide evaluation in the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas.~~

~~(d) The primary level evaluation shall be provided by:~~

~~1. A physician or nurse practitioner; and~~

~~2. A primary evaluator approved by the cabinet.~~

~~(e) A primary level evaluation shall include:~~

~~1. A medical component completed by a physician or a nurse practitioner that shall include:~~

~~a. A history and physical examination;~~

~~b. A hearing and vision screening; and~~

~~c. A child's medical evaluation that shall be current in accordance with the EPSDT Periodicity Schedule; and~~

~~2. A developmental component completed by a cabinet-approved primary level evaluator that utilizes norm-referenced standardized instruments, the results of which shall:~~

~~a. Include the recommendation of a determination of eligibility or possible referral for a record review; and~~

~~b. Be interpreted to the family prior to the discussion required by subsection (5) of this section.~~

~~(5)(a) Prior to the initial IFSP team meeting, the initial service coordinator shall contact the family and primary level evaluator to discuss the child's eligibility in accordance with subsection (4)(e)2b of this section. If the child is determined eligible, the service coordinator shall:~~

~~1. Make appropriate arrangements to select a primary service coordinator;~~

~~2. Arrange assessments in the areas identified in Section 2(1)(c) of this administrative regulation found to be delayed; and~~

~~3. Assist the family in selecting service providers in accordance with 911 KAR 2:110. If the child is receiving therapeutic services from a provider outside of the First Steps Program, the service coordinator shall:~~

~~a. Invite the current provider to be a part of the IFSP team;~~

~~b. Request that the provider supply the team with his assessment and progress reports; and~~

~~c. If the current provider does not want to participate, have the First Steps provider consult with the current provider if assessing the area being treated by the current provider.~~

~~(b) If the child does not have an established risk condition identified in Section 2(1)(c) of this administrative regulation, and is determined not eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public~~

~~Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.~~

~~(6) At the initial IFSP team meeting, the IFSP team shall:~~

~~(a) Include the following members at a minimum:~~

~~1. The parent of the child;~~

~~2. Other family members, as requested by the parent, if feasible to do so;~~

~~3. An advocate or person outside of the family, if the family requests that the person participate;~~

~~4. The initial service coordinator;~~

~~5. The primary service coordinator;~~

~~6. A provider who performed an assessment on the child; and~~

~~7. If appropriate, a First Steps provider who shall provide services to the child or family;~~

~~(b) Verify the child's eligibility;~~

~~(c) Review the evaluation information identified in subsection (4) of this section;~~

~~(d) Review the assessment reports in accordance with 911 KAR 2:130;~~

~~(e) Determine the family's outcomes, strategies and activities to meet those outcomes as determined by the family's priorities and concerns; and~~

~~(f) Determine the services the child shall receive in order for the family to learn the strategies and activities identified on the IFSP. This shall include identifying:~~

~~1. The discipline;~~

~~2. The professional, paraprofessional, or both;~~

~~3. The method in which services shall be delivered, such as individual, group, or both;~~

~~4. The payor source for the service; and~~

~~5. The frequency of the service.~~

~~(7)(a) Reevaluations shall be provided if the IFSP team determines a child's eligibility warrants review and the child does not have an established risk condition.~~

~~(b) Primary level reevaluations shall not be used to:~~

~~1. Address concerns that are medical in nature; or~~

~~2. Provide periodic, ongoing follow-up services for post-testing or testing for transition.~~

~~(c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:~~

~~1. Continue with the same level of services;~~

~~2. Continue with modified services; or~~

~~3. Transition the child from First Steps services.~~

~~(8) Beginning January 1, 2005, an annual IFSP meeting shall be held in accordance with KRS 200.664(7), to determine continuing program eligibility and the effectiveness of services provided to the child. A delay ranking by developmental domain shall be assigned in the progress review report by each therapeutic interventionist using the delay ranking scale. (9) A review of the child's First Steps record by the Record Review Team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation.~~

~~(a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the Department for Public Health for a record review if:~~

~~1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's developmental status in terms of a child's strengths and areas of need;~~

~~2. A child does not meet eligibility guidelines at the primary level, but an IFSP team member and the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or~~

~~3. The IFSP team requests an intensive level evaluation for the purposes of obtaining a medical diagnosis or to make specific program planning and evaluation recommendations for the individual child.~~

~~(b)1. If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Team, Department for Public Health, at the address indicated by the Department for Public Health:~~

~~a. A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;~~

~~b. Primary level evaluation information specified in subsection (11) of this section;~~

~~c. Available assessment reports required in 911 KAR 2:130;~~

~~d. Available IFSPs and amendments;~~

~~e. Most recent progress reports from the IFSP team members. Reports older than three (3) months shall include an addendum reflecting current progress;~~

~~f. Therapeutic staff notes from the previous two (2) months; and~~

~~g. If requesting a record review for a child who is receiving speech therapy, a hearing evaluation performed by an audiologist within six (6) months of the request.~~

~~2. The service coordinator requesting the record review shall attempt to procure and submit the following information, if available:~~

~~a. Birth records, if neonatal or perinatal complications occurred;~~

~~b. General pediatric records from the primary pediatrician;~~

~~c. Medical records from hospitalizations; and~~

~~d. Records from medical subspecialty consultations, such as neurology, orthopedic, gastroenterology or ophthalmology.~~

~~(c)1. Upon receiving a referral, a Record Review Team shall conduct a record review.~~

~~2. After conducting the record review, Record Review Team shall:~~

~~a. Determine whether there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age;~~

~~b. Determine that the child meets or does not meet the eligibility criteria established in Section 2(1) of this administrative regulation; and~~

~~c. Provide the IFSP team with recommendations for service planning.~~

~~3. If there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall:~~

~~a. Determine if further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs; and~~

~~b. Refer:~~

~~(i) The child for an intensive level evaluation, the third level in the First Steps evaluation system; or~~

~~(ii) The family to local community resources.~~

~~4. If there are not at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall provide the IFSP team with a recommendation for transition planning.~~

~~5. Upon the record review team reviewing the child's record, the team shall provide the family and service coordinator with a letter, within fourteen (14) calendar days of the review, informing them of the information described in this paragraph.~~

~~(d) Intensive level evaluations shall be conducted by one (1) or more of the following as determined by the Department for Public Health approved Record Review Team:~~

~~1. A board certified developmental pediatrician;~~

~~2. A pediatrician who has experience in the area of early childhood development;~~

~~3. A pediatric physiatrist;~~

~~4. A pediatric neurologist;~~

~~5. One (1) or more developmental professionals identified in 911 KAR 2:150, Section 1; or~~

~~6. If an IFSP is currently in place, a developmental professional representing at least one (1) discipline that is currently on the IFSP in addition to a professional whose scope of work addresses additional concerns expressed by the Record Review Team.~~

~~(10) Family rights shall be respected and procedural safeguards followed in providing evaluation services.~~

~~(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.~~

~~(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:~~

~~1. Documentation shall be obtained in the form of a notarized~~

~~statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong;~~

~~2. If a child is determined to be eligible, First Steps shall provide, at the parent's request, services that do not require, by statute, proper physical or medical evaluations; and~~

~~3. The initial service coordinator shall explain to the family that refusal due to religious beliefs may result in a denial of services which require a medical assessment on which to base treatment protocols.~~

~~(11) A report shall be written in accordance with the time frames established in paragraph (c)1 of this subsection upon completion of each primary level and intensive level evaluation.~~

~~(a) A report resulting from a primary level evaluation or an intensive level evaluation shall include the following components:~~

~~1. Date of evaluation;~~

~~2. Names of evaluators and those present during the evaluation, professional degree, and discipline;~~

~~3. The setting of the evaluation;~~

~~4. Name and telephone number of the contact person;~~

~~5. Identifying information that includes the:~~

~~a. Child's Central Billing and Information System (CBIS) identification number;~~

~~b. Child's name and address;~~

~~c. Child's chronological age (and gestational age, if prematurely born) at the time of the evaluation;~~

~~d. Health of the child during the evaluation;~~

~~e. Date of birth;~~

~~g. Reason for referral or presenting problems;~~

~~6. Tests administered or evaluation procedures utilized and the purpose of the instrument. One (1) method of evaluation shall not be used, but a combination of tests and methods shall be used;~~

~~7. Test results and interpretation of strengths and needs of the child;~~

~~8.a. Test results reported in standard deviation pursuant to subsection (4)(e)2 of this section; and~~

~~b. A rank on the delay ranking scale for each of the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation;~~

~~9. Factors that may have influenced the test conclusion;~~

~~10. Eligibility;~~

~~11. Developmental status or diagnosis;~~

~~12. Suggestions regarding how services may be provided in a natural environment that address the child's holistic needs based on the evaluation;~~

~~13. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;~~

~~14. A narrative description of the five (5) areas of the child's developmental status;~~

~~15. Social history;~~

~~16. Progress reports, if any, on the submitted information; and~~

~~17. A statement that results of the evaluation were discussed with the child's parent.~~

~~(b) The report required by paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.~~

~~(c)1. The reports and notification of need for further evaluation shall be made available to the current IFSP team and family within fourteen (14) calendar days from the date the evaluator received the complete evaluation referral.~~

~~2. In addition to the requirements established in this section, an intensive level evaluation site shall:~~

~~a. Provide to the Record Review Team a copy of the evaluation report within fourteen (14) calendar days from the date the evaluator received the evaluation referral; and~~

~~b. If an IFSP is currently in place:~~

~~(i) Focus recommendations on areas that are specified on the IFSP as being of concern to the family;~~

~~(ii) Identify strategies and activities that would help achieve the outcomes identified on the IFSP; and~~

~~(iii) Provide suggestions for the discipline most appropriate to transfer the therapeutic skills to the parents.~~

~~3. If it is not possible to provide the report and notification required in this paragraph by the established time frame due to illness of the child or a request by the parent, the delay circumstances shall be documented and the report shall be provided within five (5) calendar days of completing the evaluation.~~

~~Section 2. Eligibility. (1) Except as provided in subsection (2) or (3) of this section, a child shall be eligible for First Steps services if he is:~~

~~(a) Aged birth through two (2) years;~~

~~(b) A resident of Kentucky at the time of referral and while receiving a service;~~

~~(c) Through the evaluation process determined to have fallen significantly behind developmental norms in the following skill areas:~~

~~1. Total cognitive development;~~

~~2. Total communication area through speech and language development, which shall include expressive and receptive;~~

~~3. Total physical development including growth, vision and hearing;~~

~~4. Total social and emotional development; or~~

~~5. Total adaptive skills development; and~~

~~(d) Significantly behind in developmental norms as evidenced by the child's score being:~~

~~1. Two (2) standard deviations below the mean in one (1) skill area; or~~

~~2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.~~

~~(2)(a) If a norm-referenced testing reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (1)(d) of this section, a more in-depth standardized test in that area of development may be administered if the following is evident:~~

~~1. The primary level evaluator, service coordinator or the family has a concern or suspects that the child's delay may be greater than the testing revealed;~~

~~2. A more sensitive norm-referenced test tool may reveal a standardized score which would meet eligibility criteria; and~~

~~3. There is one (1) area of development that is of concern.~~

~~(b) Upon completion of the testing required by paragraph (a) of this subsection, the results and information required by Section 1(9)(b) of this administrative regulation shall be submitted by the service coordinator to the record review team for a determination of eligibility.~~

~~(3) A child shall be eligible for First Steps services if the child:~~

~~(a) Is being cared for by a neonatal follow-up program and its staff determine that the child meets the eligibility requirements established in subsection (1) or (4) of this section; or~~

~~(b) In accordance with KRS 200.654(10)(b), has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):~~

~~Aase-Smith syndrome~~
~~Aase syndrome~~
~~Acrocallosal syndrome~~
~~Acrodysostosis~~
~~Acro-Fronto-Facio-Nasal Dysostosis~~
~~Adrenoleukodystrophy~~
~~Agenesis of the Corpus Callosum~~
~~Agyria~~
~~Aicardi syndrome~~
~~Alexander's Disease~~
~~Alper's syndrome~~
~~Amelia~~
~~Angelman syndrome~~
~~Aniridia~~
~~Anophthalmia/Microphthalmia~~
~~Antley-Bixler syndrome~~
~~Apert syndrome~~

~~Arachnoid cyst with neuro-developmental delay~~
~~Arhinencephaly~~
~~Arthrogryposis~~
~~Ataxia~~
~~Atelosteogenesis~~
~~Autism~~
~~Baller-Gerold syndrome~~
~~Bannayan-Riley-Ruvalcaba syndrome~~
~~Bardet-Biedl syndrome~~
~~Bartsocas-Papas syndrome~~
~~Beals syndrome (congenital contractural arachnodactyly)~~
~~Biotinidase Deficiency~~
~~Bixler syndrome~~
~~Blackfan-Diamond syndrome~~
~~Bobble Head Doll syndrome~~
~~Borjeson-Forssman-Lehmann syndrome~~
~~Brachial Plexopathy~~
~~Brancio-Oto-Renal (BOR) syndrome~~
~~Campomelic Dysplasia~~
~~Canavan Disease~~
~~Carbohydrate Deficient Glycoprotein syndrome~~
~~Cardio-Facio-Cutaneous syndrome~~
~~Carpenter syndrome~~
~~Cataracts - Congenital~~
~~Caudal Dysplasia~~
~~Cerebro-Costo-Mandibular syndrome~~
~~Cerebellar Aplasia/Hypoplasia/Degeneration~~
~~Cerebral Atrophy~~
~~Cerebral Palsy~~
~~Cerebro-oculo-facial-skeletal syndrome~~
~~Charge Association~~
~~Chediak Higashi syndrome~~
~~Chondrodysplasia Punctata~~
~~Christian syndrome~~
~~Chromosome Abnormality~~ ~~a. unbalanced numerical (autosomal)~~ ~~b. numerical trisomy (chromosomes 1-22)~~ ~~c. sex chromosomes XXX; XXXX; XXXXX; XXXY; XXXXY~~
~~CNS Aneurysm with Neuro-Developmental Delay~~
~~CNS Tumor with Neuro Developmental Delay~~
~~Cockayne syndrome~~
~~Coffin Lowry syndrome~~
~~Coffin Siris syndrome~~
~~Cohen syndrome~~
~~Cone Dystrophy~~
~~Congenital Cytomegalovirus~~
~~Congenital Herpes~~
~~Congenital Rubella~~
~~Congenital Syphilis~~
~~Congenital Toxoplasmosis~~
~~Cortical Blindness~~
~~Costello syndrome~~
~~Cri du chat syndrome~~
~~Cryptophthalmos~~
~~Cutis Laxa~~

~~Cytochrome-c Oxidase Deficiency~~
~~Dandy Walker syndrome~~
~~DeBarsy syndrome~~
~~DeBuquois syndrome~~
~~Dejerine-Sottas syndrome~~
~~DeLange syndrome~~
~~DeSanctis-Cacchione syndrome~~
~~Diastrophic Dysplasia~~
~~DiGeorge syndrome (22q11.2 deletion)~~
~~Distal Arthrogryrosis~~
~~Donohue syndrome~~
~~Down syndrome~~
~~Dubowitz syndrome~~
~~Dyggve Melchor-Clausen syndrome~~
~~Dyssegmental Dysplasia~~
~~Dystonia~~
~~EEC (Ectrodactyly-ectodermal dysplasia-clefting) syndrome~~
~~Encephalocele~~
~~Encephalo-Cranio-Cutaneous syndrome~~
~~Encephalomalacia~~
~~Exencephaly~~
~~Facio-Auriculo-Radial dysplasia~~
~~Facio-Cardio-Renal (Eastman-Bixler) syndrome~~
~~Familial Dysautonomia (Riley-Day syndrome)~~
~~Fanconi Anemia~~
~~Farber syndrome~~
~~Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)~~
~~Femoral Hypoplasia~~
~~Fetal Alcohol syndrome/Effects~~
~~Fetal Dyskinesia~~
~~Fetal Hydantoin syndrome~~
~~Fetal Valproate syndrome~~
~~Fetal Varicella syndrome~~
~~FG syndrome~~
~~Fibrochondrogenesis~~
~~Floating Harbor syndrome~~
~~Fragile X syndrome~~
~~Fretman-Sheldon (Whistling Facies) syndrome~~
~~Fryns syndrome~~
~~Fucosidosis~~
~~Glaucoma - Congenital~~
~~Glutaric Aciduria Type I and II~~
~~Glycogen Storage Disease~~
~~Goldberg-Shprintzen syndrome~~
~~Grebe syndrome~~
~~Hallermann-Streiff syndrome~~
~~Hays-Wells syndrome~~
~~Head Trauma with Neurological Sequelae/Developmental Delay~~
~~Hearing Loss (30dB or greater in better ear as determined by ABR audiometry or audiometric behavioral measurements)~~
~~Hemimegalencephaly~~
~~Hemiplegia/Hemiparesis~~
~~Hemorrhage-Intraventricular Grade III, IV~~
~~Hereditary Sensory & Autonomic Neuropathy~~
~~Hereditary Sensory-Motor Neuropathy (Charcot-Marie-Tooth Dis-~~

~~ease)~~
~~Herrmann syndrome~~
~~Heterotopias~~
~~Holoprosencephaly (Aprosencephaly~~
~~Holt-Oram syndrome~~
~~Homocystinuria~~
~~Hunter syndrome (MPSII)~~
~~Huntington Disease~~
~~Hurler syndrome (MPSI)~~
~~Hyalanosis~~
~~Hydranencephaly~~
~~Hydrocephalus~~
~~Hyperpipecolic Acidema~~
~~Hypomelanosis of ITO~~
~~Hypophosphotasia-Infantile~~
~~Hypoxic Ischemic encephalopathy~~
~~I-Cell (mucolpidosis II) Disease~~
~~Incontinentia Pigmenti~~
~~Infantile spasms~~
~~Ininencephaly~~
~~Isovaleric Acidemia~~
~~Jarcho-Levin syndrome~~
~~Jervell syndrome~~
~~Johanson-Blizzard syndrome~~
~~Joubert syndrome~~
~~Kabuki syndrome~~
~~KBG syndrome~~
~~Kenny-Caffey syndrome~~
~~Klee Blattschadel~~
~~Klippel-Feil Sequence~~
~~Landau-Kleffner syndrome~~
~~Lange-Nielsen syndrome~~
~~Lanqer Giedion syndrome~~
~~Larsen syndrome~~
~~Laurin-Sandrow syndrome~~
~~Leber's Amaurosis~~
~~Legal blindness (bilateral visual acuity of 20/200 or worse corrected vision in better eye)~~
~~Leigh Disease~~
~~Lennox-Gastaut syndrome~~
~~Lenz Majewski syndrome~~
~~Lenz Microophthalmia syndrome~~
~~Levy-Hollister (LADD) syndrome~~
~~Lesch-Nyhan syndrome~~
~~Leukodystrophy~~
~~Lissencephaly~~
~~Lowe syndrome~~
~~Lowry-Maclean syndrome~~
~~Maffucci syndrome~~
~~Mannosidosis~~
~~Maple Syrup Urine Disease~~
~~Marden Walker syndrome~~
~~Marshall syndrome~~
~~Marshall-Smith syndrome~~
~~Maroteaux-Lamy syndrome (MPS VI)~~

~~Maternal PKU Effects~~
~~Megalencephaly~~
~~MELAS~~
~~Meningocele (cervical)~~
~~MERRF~~
~~Metachromatic Leukodystrophy~~
~~Metatropic Dysplasia~~
~~Methylmalonic Acidemia~~
~~Microcephaly~~
~~Microtia-Bilateral~~
~~Midas syndrome~~
~~Miller (postaxial acrofacial-Dysostosis) syndrome~~
~~Miller-Dieker syndrome~~
~~Mitochondrial Disorder~~
~~Moebius syndrome~~
~~Morquio syndrome (MPS IV)~~
~~Moya-Moya Disease~~
~~Mucolipidosis II, III~~
~~Multiple congenital anomalies (major organ birth defects)~~
~~Multiple Pterygium syndrome~~
~~Muscular Dystrophy~~
~~Myasthenia Gravis - Congenital~~
~~Myelocystocele~~
~~Myopathy - Congenital~~
~~Myotonic Dystrophy~~
~~Nager (Acrofacial Dysostosis) syndrome~~
~~Nance Horan syndrome~~
~~NARP~~
~~Neonatal Meningitis/Encephalitis~~
~~Neuronal Ceroid Lipofuscinoses~~
~~Neuronal Migration Disorder~~
~~Nonketotic Hyperglycinemia~~
~~Noonan syndrome~~
~~Ocular Albinism~~
~~Oculocerebrocutaneous syndrome~~
~~Oculo-Cutaneous Albinism~~
~~Optic Atrophy~~
~~Optic Nerve Hypoplasia~~
~~Oral-Facial-Digital syndrome Type I-VII~~
~~Osteogenesis Imperfecta Type III-IV~~
~~Osteopetrosis (Autosomal Recessive)~~
~~Oto-Palato-Digital Syndrome Type I-II~~
~~Pachygyria~~
~~Pallister Mosaic syndrome~~
~~Pallister-Hall syndrome~~
~~Pelizaeus-Merzbacher Disease~~
~~Pendred's syndrome~~
~~Periventricular Leukomalacia~~
~~Pervasive Developmental Disorder~~
~~Peters Anomaly~~
~~Phocomelia~~
~~Pierre Robin Sequence~~
~~Poland Sequence~~
~~Polymicrogyria~~

~~Popliteal Pterygium syndrome~~
~~Porencephaly~~
~~Prader-Willi syndrome~~
~~Progeria~~
~~Propionic Acidema~~
~~Proteus syndrome~~
~~Pyruvate carboxylase Deficiency~~
~~Pyruvate Dehydrogenase Deficiency~~
~~Radial Aplasia/Hypoplasia~~
~~Refsum Disease~~
~~Retinoblastoma~~
~~Retinoic Acid Embryopathy~~
~~Retinopathy of Prematurity Stages III, IV~~
~~Rett syndrome~~
~~Rickets~~
~~Rieger syndrome~~
~~Roberts SC Phocomelia~~
~~Robinow syndrome~~
~~Rubinstein-Taybi syndrome~~
~~Sanfilippo syndrome (MPS III)~~
~~Schinzel-Giedion syndrome~~
~~Schimmelpenning syndrome (Epidermal Nevus syndrome)~~
~~Schizencephaly~~
~~Schwartz-Jampel syndrome~~
~~Seckel syndrome~~
~~Septo-Optic Dysplasia~~
~~Shaken Baby syndrome~~
~~Short syndrome~~
~~Sialidosis~~
~~Simpson-Golabi-Behmel syndrome~~
~~Sly syndrome (MPS VII)~~
~~Smith-Fineman-Myers syndrome~~
~~Smith-Limitz-Opitz syndrome~~
~~Smith-Magenis syndrome~~
~~Sotos syndrome~~
~~Spina Bifida (Meningomyelocele)~~
~~Spinal Muscular Atrophy~~
~~Spondyloepiphyseal Dysplasia Congenita~~
~~Spondylometaphyseal Dysplasia~~
~~Stroke~~
~~Sturge-Weber syndrome~~
~~TAR (Thrombocytopenia-Absent Radii syndrome)~~
~~Thanatophoric Dysplasia~~
~~Tibial Aplasia (Hypoplasia)~~
~~Toriello-Carey syndrome~~
~~Townes-Brocks syndrome~~
~~Treacher-Collins syndrome~~
~~Trisomy 13~~
~~Trisomy 18~~
~~Tuberous Sclerosis~~
~~Urea Cycle Defect~~
~~Velocardiofacial syndrome (22q11.2 deletion)~~
~~Wildervanck syndrome~~
~~Walker-Warburg syndrome~~
~~Weaver syndrome~~
~~Wiedemann-Rautenstrauch syndrome~~
~~Williams syndrome~~
~~Winchester syndrome~~
~~Wolf-Hirschhorn syndrome~~
~~Yunis-Varon syndrome~~
~~Zellweger syndrome~~

~~(4) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the results of the semiannual progress review:~~

~~(a) Meet the initial eligibility requirements of subsections (1) to (3) of this section; or~~

~~(b) Indicate a continued delay on the semiannual progress review's delay ranking scale.~~

~~(5) If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:~~

~~(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth. The evaluator shall ensure that the instrument being used allows for the adjustment for prematurity. If it does not, another instrument shall be used.~~

~~(b) Correction for prematurity shall not be appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.~~

~~(c) Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.~~

~~(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.~~

~~Section 3. Incorporation by Reference. (1) The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule, August 2003 edition, is incorporated by reference.~~

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides requirements to establish eligibility for the Kentucky Early Intervention System. Requirements for child evaluation are also included in this regulation.

(b) The necessity of this administrative regulation: States must establish the specific detail for eligibility to receive early intervention services. While federal statute and regulation describe the mandatory populations of infants and toddlers to be served under Part C of the Individuals with Disabilities Education Improvement Act (Pub.L. 108-446), states set the specific procedures and criteria for eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650-200.676 requires the state to develop and implement a comprehensive, statewide early intervention system that complies with federal statute and regulation. KRS 200.652(2) specifically requires the state to provide assistance and support to the family of an infant or toddler with a disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of

the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides specific guidance for evaluation and assessment, reflecting current program structure and best practices in the field of early intervention. It also removes obsolete and redundant language. Required federal regulatory language is also added to the administrative regulation. The listing of eligible medical conditions is updated. Criteria for eligibility by developmental delay is unchanged.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reduce costs for unnecessary evaluations and assessments and to specify procedures for federal requirements for reporting the entry and exit status of all children served by Part C of Pub.L. 108-446. (Federal requirement is found at 34 C.F.R. 303.540.) The amendments reflect implementation and use of the online data/child record system and reorganization of the Point of Entry system.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statute: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for evaluation and assessment will allow the state regulations to align with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 200 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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 early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately $40 million. The revisions to this administrative regulation will not cost the affected entities any additional dollars. Changes to evaluation and assessment represent an elimination of unnecessary and duplicative testing, resulting in efficiencies to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinator by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation:
Federal funds (12%) and 88% state general funds will be used to implement this administrative regulation. No state match is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.320 through 303.323 outlines the states responsibilities in indentifying, evaluating and assessing children potentially eligible to receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.650 charges the Cabinet for Health and Family Services, Department for Public Health to comply with all federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to differentiate the process for eligibility (eligible by developmental delay; eligible by established risk; eligible by informed clinical opinion) Kentucky has streamlined the evaluation and assessment process.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,

than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
902 KAR 30:130E

This emergency administrative regulation, 902 KAR 30:130E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the Cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The US Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the US Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the US Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:130E. [~~Kentucky Early Intervention Program~~] Assessment, [~~and~~] service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.322, 303.340-303.346, 20 U.S.C. 1471-1476

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.500, 20 U.S.C. 1476[~~, EO 2004-726~~]

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions of assessment and the Individualized Family Service Plans used in First Steps, and the provisions for assistive technology[~~Kentucky's Early Intervention Program~~].

Section 1. Assessment. (1) [~~Initial assessment activities for children without established risk conditions shall occur after the establishment of a child's eligibility for First Steps and prior to the initial IFSP in accordance with 911 KAR 2:120, Section 1.~~

~~(a) An initial assessment shall occur within the areas of development that were determined to be below the normal range, a score greater than -1.0, as identified in the primary level evaluation.~~

~~(b) The following shall complete an assessment:~~

~~1. A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern; and~~

~~2. The fewest additional disciplines as needed to assess the other areas identified as delayed.~~

~~(2)~~] Assessment shall be an[~~the~~] on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150[~~911 KAR 2:150~~] throughout the period of a child's eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs;

(b) The services appropriate to meet those needs;

(c) The family's resources, priorities and concerns which shall be:

1. Voluntary on the part of the family;

2. Family-directed; and

3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2)[~~(3)(a)~~] Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations;[~~, which shall:~~

~~a. Take place over several days if possible;~~

~~b. Occur in natural settings;~~

~~c. Include play and functional activities of the child's day; and~~

~~d. Be recorded in a factual manner;~~]

2. Interview and parent reports; and[~~, which shall:~~

~~a. Involve the use of open-ended questioning after the assessor establishes rapport;~~

~~b. Be provided by parents and other primary caregivers; and~~

~~c. Include the effect and impact of the child's disability on participation in natural environments; and~~]

3. Behavioral checklist and inventories[~~, which shall:~~

~~a. Be completed by caregivers by mail, phone or through face-to-face interview; and~~

~~b. Allow for comparison across settings~~].

(b) Direct assessment shall include one (1) or more instruments that are:

1.[~~That are~~] Appropriate for an infant or toddler and allow[~~that allows~~] for adaptations for a disability as needed; and

2. [~~That are~~] Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(3)[~~(4)~~] If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team reasons for an additional[~~parent has a documented concern that would necessitate another~~] assessment;

(b) Whether[~~Why there is not~~] a current provider on the IFSP team [~~that~~] can assess the area or areas of concern; and

(c) Circumstances relating to[~~What has changed in~~] the child's ability or the family's capacity to address the[~~their~~] child's developmental needs that[~~to~~] warrant the subsequent assessment.

(4)[~~(5)~~] A service coordinator shall obtain a physician's or Advanced Practice Registered Nurse (APRN's)[~~ARNP's~~] written approval[~~consent~~] in order to complete an assessment on a child deemed medically fragile. The approval[~~consent~~] shall be specific as to the modifications needed to accommodate the child's medical status[~~skill areas that may be assessed~~].

(5) A formal, direct assessment shall include a written report when performed for initial assessment, the annual assessment, exit progress monitoring, or when authorized by the IFSP in accordance with Section 1(3) of this administrative regulation. This report shall include:[~~(6) An assessment shall have a written report that shall include:~~]

(a) A description of the assessment instruments used in accordance with subsection (2)[~~(3)~~](b) of this section;

(b) A description of the assessment activities and the information obtained, including information gathered from the family;

(c) The child's First Steps identification number;[~~Identifying information, including:~~

~~1. The central billing and information identification number;~~]

2. [~~The child's Social Security number, if available;~~

~~3.~~] The name of the child;

3.[~~4.~~] The child's age at the date of the assessment;

4.[~~5.~~] The name of the service provider and discipline;

5.[~~6.~~] The date of the assessment;

6.[~~7.~~] The setting of the assessment;

7.[~~8.~~] The state of health of the child during the assessment;

8.[~~9.~~] The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9.[~~10.~~] The medical diagnosis if the child has an established risk condition;

10.[~~11.~~] The formal and informal instruments and assessment methods and activities used; and

11.[~~12.~~] Who was present for the assessment.[~~; and~~

~~13. The signature of the assessor;~~]

(d) A profile of the child's level of performance, in a narrative form which shall indicate:

1. Concerns and priorities;

2. Child's unique strengths, needs, and preferences;

3. Skills achieved since last report, if applicable;

4. Current and emerging skills, including skills performed independently and with assistance; and

5. Recommended direction for[~~of~~] future service delivery; and

(e) Recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information, the evaluation, and the assessment.

(6) A copy of the cabinet-approved criterion referenced assessment protocol shall be submitted electronically to the data collection site designated by the state lead agency within ten (10) working days of the completion of the assessment.[~~Suggestions for strategies, materials, settings, equipment or adaptations that shall support the child's development in natural environments; and~~

~~(f) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.~~]

(7)(a) The initial and other formal assessments, with written reports,[~~assessment, other formal assessments and their resulting report~~] shall be completed and recorded in the child's record on the online data management system[~~sent to the service coordinator~~] within ten (10) working days of the provider receiving the [~~complete written assessment~~] referral from the POE staff[~~service coordinator. The complete assessment referral request shall include:~~

~~1. The point of entry's intake and child history documentation;~~

~~2. The primary level evaluation report;~~

~~3. The current IFSP; and~~

~~4. Authorizing CBIS billing forms~~].

(b) The provider who performed the assessment shall:

1. Verbally share the assessment report with the family and shall document the contact in the assessor's notes;

2. Provide the written report to the family and the service coordinator within the time frame established in paragraph (a) of this subsection; and

3. Write the report in family-appropriate language that the child's family can easily understand.

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in his staff notes with supportive documentation made in the child's record by the service coordinator, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment.

(8)(a)[~~ Information gathered in the assessment shall be used to determine the service decisions included in the IFSP.~~

~~(9)(a) A child enrolled in First Steps shall receive an assessment as an integral part of service delivery.~~

~~(b) Assessment shall be ongoing in the First Steps Program to ensure concerns and strategies are focused to meet the child and family's current needs.~~] An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered early[~~therapeutic~~] intervention, not an assessment.

(b)[~~(c)~~] Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(9)[~~(10)~~] Ten (10) calendar days prior to either the [~~earlier of~~] the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports to the primary service coordinator and family.

(10)(a) Within 120 days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) The assessment used for annual redetermination of eligibility may be used to meet this requirement as long as it is completed within 120 days prior to the child's exit from the First Steps Program.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract between[~~with~~] the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(2) The [~~First Steps~~] IFSP [~~Form~~] shall be [~~used to record the IFSP. Items on the IFSP form shall be~~] completed according to instructions and[~~as instructed on the form. The accompanying initial IFSP documentation~~] shall include:

(a) Appropriate evaluation and assessment reports in accordance with 902 KAR 30:120, Section 2[~~911 KAR 2:120, Section 1 and assessments reports in accordance with this section~~];

(b) A statement of the specific early intervention services, founded on scientifically based research to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes identified, including the frequency, intensity, and method of delivering the services;[~~Identification of covered services and early intervention approaches;~~]

(c) Service delivery settings; and

(d) A list of IFSP team members and how they participated in the meeting[~~Signed approval by the IFSP team that shall include all individuals identified in the responsible party column of the IFSP including each parent or guardian present~~].

(3)(a) [~~With the exception of a situation established in paragraphs (b) or (c) of this subsection,~~] An authorized IFSP shall be valid for a period not to exceed six (6) months [~~in length~~]. An amendment that occurs to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(4) If the family or service provider is unable to keep the scheduled appointment due to illness or any other reason, the service provider shall document the circumstances in staff notes.

(5)[~~If an IFSP is expected to expire within twenty-one (21) calendar days of a child turning age three (3), an extension of the current IFSP shall be granted if the service coordinator provides the payment authorization coordinator at the Department for Public Health office with the following information:~~

~~1. A copy of the transition plan developed at the transition conference held at least ninety (90) calendar days prior to the child turning three (3);~~

~~2. A list of who attended the transition conference;~~

~~3. A copy of the IFSP that is expiring or has expired; and~~

~~4. A letter indicating that the:~~

~~a. IFSP team agrees with the decision to extend the IFSP; and~~

~~b. Parents are aware that they have the option of:~~

~~(i) Having an IFSP team meeting; or~~

~~(ii) Waiving their right to meet as an IFSP team.~~

~~(c) If an IFSP team meeting cannot be scheduled and convened prior to the current IFSP expiring, an extension may be authorized if the service coordinator provides the following information to the Department for Public Health office:~~

~~1. A letter requesting an extension of the current IFSP, including the dates the extension is to cover;~~

~~2. A detailed description of attempts made to hold an IFSP meeting and the reasons why the meeting cannot be held prior to the expiration of the current IFSP;~~

~~3. The scheduled date that the next IFSP meeting shall take place;~~

~~4. A copy of the current IFSP that has expired or is expiring, with amendments; and~~

~~5. Copies of the current progress reports from the IFSP team.~~

~~(d) If a family chooses not to receive a service included on the IFSP, for reasons such as illness or an inability to keep an appointment, the service provider shall document the circumstances in his staff notes.~~

~~(4)~~] The following shall be adhered to in the development and implementation of the IFSP. IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services[~~intervention's involvement in their lives~~];

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Ensure that First Steps services are flexible, accessible, founded on scientifically based research to the extent practicable, and are necessary to meet the unique needs of the child and family to achieve the outcomes identified, including the frequency, intensity, and method of delivery of the services [~~and responsive to family-identified needs~~]; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible; [~~and~~]

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting[~~atmosphere~~] which includes children without disabilities.

(6)[~~(5)(a)~~] For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120[~~911 KAR 2:120~~], a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(7)[~~(b) If the initial IFSP meeting does not occur within forty-five (45) days due to illness of the child or approval to delay by the parent, the delay circumstances shall be documented on the IFSP.~~

~~(6)~~] The IFSP shall be reviewed [~~for a child and the child's family~~] by convening a [~~face-to-face~~] meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) The family and[~~or~~] a team member requests a periodic IFSP review meeting;

(b) An early[~~A therapeutic~~] intervention service is added or increased.

(8)[~~(7)(a) The service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining that approval on the IFSP. The team members shall document the contact and approval in their staff notes. The contact and approval shall occur if:~~

~~1. A child is discharged from:~~

~~a. A service due to achieving developmental milestones in that area; or~~

~~b. The First Steps Program;~~

~~2. A service provider recommends a decrease in the frequency, intensity or duration of the service provided by that service provider;~~

~~3. The frequency of a service increases but not the number of units, such as changing from once a week for one (1) hour to twice a week for thirty (30) minutes;~~

~~4. A member of the IFSP team determines that an additional assessment is needed;~~

~~5. The family requests transportation services;~~

~~6.a. A service provider is being replaced;~~

~~b. The replacement provider does not change the outcomes identified on the current IFSP; and~~

~~c. The family agrees;~~

~~7. A team member changes provider numbers and the family wishes to retain that team member's services; or~~

~~8. An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes.~~

~~(b) The family shall be given prior written notice of any changes to the IFSP.~~

~~(8) With the approval of the family, the primary service coordinator shall arrange an IFSP conference to discuss the transition of the family from the program. The conference shall be conducted at least ninety (90) days and up to six (6) months before the child's third birthday and shall include:~~

~~(a) The family;~~

~~(b) A representative of the local education agency and representatives of other potential settings;~~

~~(c) The primary service coordinator as a representative of the First Steps Program;~~

~~(d) Others identified by the family; and~~

~~(e) Current service providers.~~

~~(9)~~] The IFSP shall include:

(a)1. A summary of the family rights handbook;

2. A signed statement of assurances by the family; and

3. A statement signed by the parent that complies with KRS 200.664(6);

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;[~~:~~]

2. Cognitive development that includes[~~include~~] skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. [~~These include:~~

~~a. Attachment with caregivers or family members;;~~

~~b. Interactions with nondisabled peers and adults;~~

~~c. Play skills; and~~

~~d. Self-concept development;~~]

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions. [~~that include:~~

~~a. Self-feeding;~~

~~b. Toileting;~~

~~c. Dressing and grooming; and~~

~~d. Meaningful interaction with the environment;~~

~~6. Physical development that shall be documented annually and that shall include:~~

~~a. Vision;~~

~~b. Hearing;~~

~~c. Health status; and~~

~~d. If present, the established risk condition;~~]

(c) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(d) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction and through parent report;

(e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(f)[~~1.~~] A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome [~~and strategy~~] statements shall:

1.[~~a.~~] Be functionally stated;

2.[~~b.~~] Be representative of the family's own priorities;

3.[~~c.~~] Fit naturally into the family's routines or schedules;

4.[~~d.~~] Reflect the use of the family's own resources and social support network; and

5.[~~e.~~] Be flexible to meet the child and family's needs in expanded current and possible future environments; and[~~2. Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family's desired outcome for the child and family.~~

~~a. Typically strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;~~

~~b. Activities shall refer to the routines or regular events that occur in the child's natural environment; and~~

~~c. The strategies and activities area shall include how strategies will be embedded into activities, the criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill;~~]

(g)1. The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Service documentation shall be stated in frequency, intensity, duration, location and method of delivering services, and shall include payment arrangements, if any;

2. [~~A student in a field experience with an approved First Steps provider who provides therapeutic intervention shall complete and sign staff notes and the First Steps provider shall also complete and sign a staff note for each session in which the student facilitates intervention, including a statement in the note that direct one-on-one supervision was provided during the intervention session.~~

~~3.~~] With the exception of group intervention, and unless prior authorization is granted in accordance with 902 KAR 30:200[~~911 KAR 2:200~~], Section 4, based on individual needs of the child, the frequency and intensity for early[~~therapeutic~~] intervention for each child shall not exceed one (1) hour per discipline per week[~~day~~] for the following disciplines:

a. Audiologist;

b. RN or LPN;

c. Nutritionist or dietician;

d. Occupational therapist or occupational therapist assistant;

e. Orientation and mobility specialist;

f. Physician;

g. Physical therapist or physical therapist assistant;

h. Psychologist, psychological practitioner[~~certified psychologist with autonomous functioning~~], psychological associate, family therapist, [~~or~~] licensed social worker, or licensed professional clinical counselor;

i. Speech language pathologist [~~or speech language pathologist assistant~~];

j. Vision specialist including teacher of the visually impaired, optometrist, and ophthalmologist;

k. Teacher of the deaf and hard of hearing; or

l. Developmental interventionist [~~or developmental associate~~];

3.[~~4.~~]a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

b. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment; and

c. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4.[~~5.~~] If the service cannot be provided in a natural environment, the IFSP shall be documented with the reason, including:

a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;

b. How the service is supported by the peer reviewed research;

c. How the service provided in this location or using this approach will support the child's ability to function in his natural environment; and

d. A timeline as to when the service might be expected to be delivered in a natural environment approach.[;]

(h) The projected dates for initiation of the services, and the anticipated length, duration, and frequency of those services;

(i) Other services that the child needs that are not early intervention services, such as medical services or housing for the family., that are not early intervention services. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(j) The name of the [~~primary~~] service coordinator representing [~~chosen to represent~~] the child's or family's needs and the primary service provider. The [~~primary~~] service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 902 KAR 30:110, Section 2[~~911 KAR 2:140, Section 1(6)~~];

(k) Include at least one (1) transition outcome that addresses transition to preschool services to the extent that those are appropriate or to other services that may be available, if appropriate, as a part of every IFSP and is supported by steps that may include:

1. A description of types of information the family might need in relation to future placements;

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting;

4. How and when assistive technology equipment will be returned and how it will be replaced in the next setting if appropriate; and

5. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement.[~~The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate.~~

~~1. With approval of the family, an IFSP transition conference shall occur at least ninety (90) days and up to six (6) months prior to the child's third birthday;~~

~~2. The IFSP transition conference shall involve:~~

~~a. IFSP team members;~~

~~b. Staff from the local public educational agency; and~~

~~c. Other agencies at the family's request that could be potential service agencies after the child turns three (3); and~~

~~3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. The service coordinator shall chair this meeting; and~~]

(l) Documentation substantiating the following if the child is being provided group intervention:

1. If the child is enrolled in day care or attending a group during normal routines, why the early[~~therapeutic~~] intervention cannot be provided in the child's current group setting; and

2. Early[~~Therapeutic~~] intervention during group shall be directly related to the child's individualized strategies and activities as identified on the IFSP.

(9)[~~(10)~~] If the IFSP team determines that an early[~~a therapeutic~~] intervention service shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:

(a) Which disciplines are providing the therapy using this approach;

(b) Evidence of transdisciplinary planning and practice, including documentation of how role-release is occurring;

(c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;

(d) That the service is individualized to the particular family and child's needs; and

(e) If more than one (1) provider is present and providing early[~~therapeutic~~] intervention services at the same time using a co-treatment approach:

1. Why this approach is being used;

2. The outcomes and activities;

3. Who is performing what activities; and

4. That the service providers involved are providing or learning about the early[~~therapeutic~~] intervention at the same time.

(10)[~~(11)~~] The family shall be encouraged to discuss their child's activities, strengths, and likes and dislikes[~~,~~] exhibited at home.

(11)[~~(12)~~] The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(12)[~~(13)~~] Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(13)[~~(14)~~] The families may agree, disagree, or refute the assessment information.

(14)[~~(15)~~] The family interpretation and perception of the assessment results shall be ascertained and the family's wishes and desires shall be documented as appropriate.

(15)[~~(16)~~] If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team considers the recommendation, determines[~~verifies~~] that it relates to a chosen outcome, and family priority, and agrees that it is a necessary service[~~to it~~].

Section 3. Assistive Technology. (1) The cost of an assistive technology device shall be reimbursed if the device is approved by the Part C Coordinator.

(2) To access assistive technology service and devices, the child shall:

(a) Be eligible for First Steps;

(b) Have a need for assistive technology devices and services documented by appropriate assessment procedures; and

(c) Have a need for and use of assistive technology devices and services documented in the IFSP.

(3) The First Steps assistive technology review process shall be utilized for the following:

(a) All equipment requests which exceed $100; and

(b) All equipment that is deemed questionable by the service coordinator or other POE staff, state lead agency staff, or cannot be determined by the IFSP team as appropriate.

(4) Request will be processed within ten (10) days of receipt of required information. The required information includes:

(a) A current IFSP;

(b) Assessments with recommendations;

(c) Justification statement of specific devices based on needs;

(d) Information regarding equipment or device request; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(5) The decision made through the review process may be appealed to the Part C Coordinator who shall:

(a) Consult with the monitoring committee; and

(b) Issue the final decision.

(6) The decision of the Part C Coordinator may be appealed pursuant to 902 KAR 30:180.

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

(a) The "IFSP Extension Request form RF 11", May 2010 edition; and

(b) The "IFSP Extension Request form RF 11A", May 2010 edition.[~~The First Steps Individualized Family Service Plan (IFSP), January 2005, is incorporated by reference.~~]

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for assessment, service planning and assistive technology within the Kentucky Early Intervention System.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators, primary level evaluation providers, intensive level evaluation teams and other service providers on assessments, service planning and assistive technology. Assessment is service that all children in the Kentucky Early Intervention System receive and provides the foundational information to develop service plans. As a critical feature of the early intervention system, guidance is required to ensure quality assessments that meet the federal requirements as well as being sources of useful information for practitioners and families. Federal requirements for assessment are found at 34 C.F.R. 303.322(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal statute and regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation add guidance and clarity to assessment, service planning and assistive technology conducted by the Individual Family Service Plan teams. Language consistent with applicable federal regulations and statute is added. Obsolete language is removed and some detail was removed. Guidance in the form of timelines and responsibilities of early intervention providers is also added to the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation add guidance and clarity to assessment, service planning and assistive technology conducted by the Individual Family Service Plan teams. Language consistent with applicable federal regulations and statute is added to ensure compliance with federal regulation. Some language is removed that is more appropriate for policy and procedure documents. Obsolete language is removed so that the regulation reflects current program structure and practice. The disciplines that use assistive technology in their practices (speech language pathologists, physical therapists, and occupational therapists) will benefit from the clarity and guidance the regulation provides.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 (6) and KRS 200.652 (3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for the IFSP will bring IFSPs into alignment with federal regulations. Also, regulations will now reflect the current practices and tools (such as the online data/child's record system) thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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 early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): No additional costs will be associated with the amendment to this administrative regulation.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services. This increased knowledge of the early intervention system may lead to increased supports and progress for their children.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes an fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will save an estimated $10,000 per year by reducing the number of unnecessary plan revisions and duplicate service assessments.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the states responsibilities in the development and implementation of the Individual Family Service Plan. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health with the development of the IFSP for eligible children.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with the federal statutes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
902 KAR 30:150E

This emergency administrative regulation, 902 KAR 30:150E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The U.S. Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the U.S. Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the U.S. Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:150E. [~~Kentucky Early Intervention Program~~] Personnel qualifications.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676[~~, EO 2004-726~~]

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 20.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions for provider[~~of personnel~~] qualifications for

the participation in the[~~as they relate to~~] First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll sufficient providers to carry out the early intervention services according to the provision of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications set forth in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall;

(a) Complete and submit an application to the program that shall include:

1. A valid professional license, registration, or certificate;

2. A provider enrollment form;

3. A code of ethical conduct; and

4. An individual provider agreement.

(b) Adhere to the background check policy and submit, prior to final approval:

1. Administrative Office of the Courts, PT 49 Criminal Background Check form; and

2. Central Registry Check form, DPP-156.

(c) Agree to provide service within the individuals or agency's scope of practice and in accordance with First Steps policy and state and federal regulations and laws.

(d) Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application will not be considered complete and will not be processed until all information and any subsequent documentation requested by the program is provided.

(6) The program shall make an enrollment determination within ninety (90) days of receipt of a completed application.

(7) If the applicant is approved for enrollment, the contract shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes. The provider number is a unique identifier and shall not be shared with any other provider.

(8) A provider's participation shall begin and end on the dates specified in the executed contract.

(9) If an agency is the enrolled provider, the agency is responsible for ensuring that all staff providing First Steps services meet the First Steps personnel qualifications.

(10) Provider applications and contracts must be renewed every even-numbered year, and the individual or agency wishing to renew a contract must resubmit the required documentation to continue the contract.

Section 2. Personnel Qualifications. (1) Minimum[~~Minimal~~] qualifications for professionals or disciplines providing services in First Steps shall be:

(a) An audiologist shall have in accordance with KRS 334A.030:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A family therapist shall have in accordance with KRS 335.300:

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have in accordance with KRS 161.028:

1. A bachelor's degree; and

2.a. An interdisciplinary early childhood education (IECE) certificate by the Kentucky Education Professional Standards Board, Division of Certification or be able to obtain a probationary or emergency IECE certificate issued by the Educational Professional Standards Board; or[~~;~~]

b. [~~Be working toward the IECE certificate by:~~

~~(i) Being enrolled in an approved preparation program in IECE at a university or college; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills in the teacher performance standards for IECE as stated in 16 KAR 2:040, Section 9; or~~

~~c. Hold~~] A valid out-of-state certificate for the teacher of children ages' birth to three (3) years with disabilities.

(d) A nurse shall have in accordance with KRS 314.041:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A nutritionist shall have in accordance with KRS 310.031:

1. A master's degree; and

2. A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) A dietitian shall have in accordance with KRS 310.021:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(g) An occupational therapist shall have in accordance with KRS 319A.110:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(h) An orientation and mobility (O and M) specialist shall have in accordance with KRS 161.020 and with the Division of Exceptional Children Services, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M[~~,~~].

(i) A physician shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(j) A physical therapist shall have in accordance with KRS 327.020:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

(k) A psychologist shall have in accordance with KRS 319.032:

1. A doctoral degree; and

2. A license from Kentucky Board of Examiners of Psychology.

(l) A psychological practitioner[~~certified psychologist with autonomous functioning~~] or licensed psychological associate shall have in accordance with KRS 319.056 or 319.064:

1. A master's degree; and

2. A certificate from the Kentucky Board of Examiners of Psychology.

(m) A social worker shall have in accordance with KRS 335.090:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Social Work.

(n) A speech-language pathologist shall have in accordance with KRS 334A.050:

1. A master's degree; and

2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. An interim license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently-enrolled First Steps speech pathology provider.

(o) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:

1. A bachelor's degree; and

2. A certificate for teaching the hard of hearing, deaf, or hearing impaired, or a certificate for teaching the hearing impaired, grades P-12, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A teacher of the visually impaired shall have in accordance with KRS 161.030:

1. A bachelor's degree; and

2. A certificate for teaching of the visually impaired, grades P-12, or a certificate for teaching the partially seeing, blind, or visually impaired, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(q) A licensed professional clinical counselor shall have in accordance with KRS 335.525(1):

1. A master's degree; and

2. A license from the Kentucky Board of Licensure.

(r) An optometrist shall have in accordance with KRS 320.290:

1. A degree from an accredited school or college of optometry; and

2. A license from the Kentucky Board of Licensure.

(s) An ophthalmologist shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree;

2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing [~~early interventions~~] services in First Steps shall be:

(a) A developmental associate shall:

1.a. Have an associate degree in the area of interdisciplinary early childhood education (IECE); and

b.[~~ Have a child development associate certificate for infant and toddlers caregiver or home visitor;~~

~~c. Have a postsecondary vocational education diploma in child development or child care; or~~

~~d. Be employed in the developmental associate role in an approved program by October 1, 1997, and have a high school diploma or GED and be working toward one (1) of the qualifications stated in clauses a, b, or c of this subparagraph by:~~

~~(i) Being enrolled in an approved program granting one (1) of the above stated qualifications; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills necessary to acquire one (1) of the above stated qualifications; and~~

~~2.~~] Be directly[~~indirectly~~] supervised by a developmental interventionist.

(b) [~~A developmental assistant shall:~~

~~1. Have:~~

~~a. A high school diploma; or~~

~~b. A GED; and~~

~~2. Be directly supervised by a developmental interventionist or developmental associate.~~

~~(c)~~] An occupational therapy assistant shall have in accordance with KRS 319A.110:

1. An associate's degree in occupational therapy[~~OTA degree~~]; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(c)[~~(d)~~] A physical therapy assistant shall have in accordance with KRS 327.040(13):

1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.

(d)[~~(e)~~] A licensed practical nurse shall have in accordance with KRS 314.051:

1. A high school diploma or a GED;

2. [~~Have~~] Completed a state approved LPN education program; and

3. A license from the Kentucky Board of Nursing.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be:

(a) A[~~An initial~~] service coordinator shall[~~be approved by the cabinet based on the following qualifications~~]:

1. Meet[~~Meeting~~] minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or

2. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years' experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) [~~A primary service coordinator shall be approved by the cabinet based on the following qualifications:~~

~~1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;~~

~~2. Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or~~

~~3. Having a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:~~

~~a. Communication skills in interviewing, negotiating and mediating, and providing informal support;~~

~~b. Problem-solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;~~

~~c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and~~

~~d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.~~

~~(c)~~] A developmental evaluator shall[~~be approved by the cabinet by~~]:

1. Meet[~~Meeting~~] minimum highest entry-level requirements for one (1) of the professionals delineated in this administrative regulation;

2. Have[~~Having a bachelor's degree in a related field;~~

~~3. Having~~] two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have[~~and 4. Having had~~] one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice, or completing a mentorship during the first year of providing services in First Steps as approved by the cabinet; and

4. Be approved by the cabinet.

(c)[~~(d)~~] An assistive technology specialists shall[~~be approved by the cabinet based on the following qualifications~~]:

1. Meet the[~~Meeting~~] minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have[~~Having~~] extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

3. Meet[~~Meeting~~] the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps; and[~~, and be approved by the cabinet~~].

4. Be approved by the cabinet.

(d)[~~(e)~~] A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

Section 3.[~~2.~~] Field Experiences - Intervention services implemented by a student.

(1) With family consent, a student[~~Students~~] may provide early[~~therapeutic~~] intervention and services under the direct one-to-one supervision of a provider qualified[~~personnel employed~~] in accordance with Section 1 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff

note for each session involving a student.

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

(a) "Form 6, Provider Enrollment Form", April 2008 edition;

(b) "The Code of Ethical Conduct"; April 2010 edition;

(c) "Form 5A Service Provider Agreement", April 2010 edition;

(d) "Administrative Office of the Courts-RU-004", January 2010 edition; and

(e) "Central Registry Check, DPP-156", December 2005 edition.

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of:

(a) What this administration regulation does: The amendment outlines the process for provider participation the Kentucky Early Intervention Program and defines the minimum qualifications for the certain professionals or disciplines that provide early intervention services. Another change defines the minimum qualifications for the recognized service position of service coordinator and deletes service positions that are no longer a part of the Kentucky early intervention system. The qualifications for developmental evaluator and assistive technology specialist are also modified.

(b) The necessity of this administrative regulation: 902 KAR 30:050 is necessary to define the professionals or disciplines that may provide early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 requires the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments identify the information required to enroll as a provider in the Kentucky early intervention program and defines the minimum qualifications for some professionals or disciplines that provide early intervention services; adds that a development interventionist may hold the probationary or emergency IECE certificate; adds licensed professional clinical counselor, optometrist, and ophthalmologist as qualified professionals; and changes associate degree for paraprofessionals and type of supervision. The amendment also defines the minimum qualifications for recognized service position of service coordinator and removes qualifications for primary service coordinator. The qualifications for developmental evaluator and assistive technology specialist are also modified.

(b) The necessity of the amendment to this administrative regulation: Information is necessary to outline the provider enrollment process. Certain professional are added as qualified early intervention providers for compliance to federal statute and regulation and to address provider shortages. Modifications for developmental evaluator and assistive technology specialist were change to reflect current practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires that the state be in compliance with federal law and KRS 200.652(3) requires a statewide system of early intervention services. The amendments to the administrative regulations accomplish these two requirements.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice. Individuals who previously performed the duties of Primary Service Coordinators have been hired by Points of Entry provider or enrolled in First Steps as another type of qualified providers or left the early intervention service system for employment in another field. Professionals who practice the discipline of optometry, ophthalmology, counseling as a licensed professional clinical counselor will need to enroll as First Steps providers if they so choose. This enrollment requirement will also affect new developmental interventionists who are currently not in the system. Agencies that employ paraprofessionals to provide early intervention services will need to ensure that the paraprofessional has the required education degree and will need to provide the appropriate type of supervision. Early intervention providers, both those who are agency-based and those who are independently contracted, that provide the services of a developmental evaluator or assistive technology specialist will need to ensure that staff meet the necessary qualifications for the respective service position.

(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 to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Individuals who meet the early intervention provider qualifications are eligible to enroll as a provider for and be paid by the First Steps system.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will reduce expenditures by an estimated $50,000 per year.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.168 and 303.169 outline the requirements for a Comprehensive system of personnel development (CSPD) and Personnel standards. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.666 charges the Cabinet for Health and Family Services, Department for Public Health to monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is ensuring that all those interested in becoming early intervention providers and service coordinators meet the highest level of qualifications for their contracted discipline.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
902 KAR 30:160E

This emergency administrative regulation, 902 KAR 30:160E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The U.S. Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the U.S. Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the U.S. Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:160E. [~~Kentucky Early Intervention Program~~] Covered services.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.650-676

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Section 1. Covered Services. (1) Services shall be covered when included and authorized through parent signature [~~or verified approval~~] on the individual Family Service Plan (IFSP)[~~individual's IFSP~~] developed by an IFSP team which shall include, at a minimum[~~least~~], the family and two (2) professionals as required[~~identified~~] in 902 KAR 30:150[~~911 KAR 2:150~~], Section 2(1)(a)-(s)[~~1(1)(a)-(p)~~], paraprofessionals as identified in 902 KAR 30:150[~~911 KAR 2:150~~], Section 2(2)(a)-(d)[~~1(2)(a)-(f)~~] or service positions as identified in 902 KAR 30:150[~~911 KAR 2:160~~], Section 2(3)(a)-(d)[~~1(3)(a)-(d)~~]:[~~(a) At least two (2) professionals, paraprofessionals, or service positions shall be from separate agencies or represent different approved providers; and~~

~~(b) One (1) discipline shall be a licensed medical professional as identified in 911 KAR 2:200, Section 3(2)(e), with the exception of Section 3(2)(e)13 and 14 of 911 KAR 2:200.~~]

(2) Services covered shall include[~~be~~]:

(a) Service coordination as provided in accordance with 902 KAR 30:110, Section 2[~~911 KAR 2:110 and 911 KAR 2:140~~]:

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(a)[~~those identified in 911 KAR 2:150~~]; and

3. Service coordination shall be provided under the limitations of 902 KAR 30:200, Sections 2(2)(a) and 3(b)[~~911 KAR 2:200, Section 4~~].

(b) Primary evaluation as provided in accordance with 902 KAR 30:120[~~911 KAR 2:120~~]:

1. Primary evaluation shall be considered the first level of a two (2) tier system of evaluation; and

2. Primary evaluation shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(b)[~~those identified in 911 KAR 2:120 and 911 KAR 2:150~~];

(c) Intensive team evaluation as provided in accordance with 902 KAR 30:120, Sections 1(4) and 2(a)(12)[~~911 KAR 2:120~~]:

1. Intensive team evaluation shall be considered the second level of a two (2) tier system of evaluation;

2. Intensive team evaluation shall be provided by qualified

professionals in accordance with 902 KAR 30:120, Section 2(a) those identified in 911 KAR 2:120 and 911 KAR 2:150;

(d) Assessment of the child[~~Service assessment~~] as provided in accordance with 902 KAR 30:130, Section 1, and 902 KAR 30:200, Section 3(1)[~~911 KAR 2:130~~];

(e) Early[~~Therapeutic~~] intervention.

1. Early[~~Therapeutic~~] intervention, defined as face-to-face intervention with the child and caregivers within the context of the environment, includes three (3) types of service:

a. Individual home or community service[~~services~~] which includes intervention provided [~~to the child~~] by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes) under the limitations of 902 KAR 30:200, Section 3(2)[~~911 KAR 2:200, Section 4~~]; or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professional's[~~professionals~~] office or center site under the limitations of 902 KAR 30:200, Section 3(2)[~~911 KAR 2:200, Section 4~~]; or

c.(i) Group intervention which includes the provision of early intervention services by First Steps qualified personnel in a group, defined as the presence of two (2) or more eligible children, at an early intervention professional's site, office, center, home, or other community-based setting where children under three (3) years of age are typically found.

(ii) The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained.

(iii) Group intervention shall be provided under the limitations of 902 KAR 30:200, Section 3(2)(b)[~~911 KAR 2:200, Section 4~~].

2. Disciplines providing early[~~therapeutic~~] intervention shall be qualified professionals in accordance with 902 KAR 30:150, Section 2(1)(a)-(s), or qualified paraprofessionals in accordance with 902 KAR 30:150, Section 2(2)(a)-(d)[~~911 KAR 2:150,~~] and shall include the following:

a. An audiologist;
b. A family therapist;
c. A developmental interventionist;
d. A developmental associate;
e. A nurse;
f. A LPN;
g. A nutritionist;
h. A dietician;
i. An occupational therapist;
j. An occupational therapy assistant;
k. An orientation and mobility specialist;
l. A physical therapist;
m. A physical therapist assistant;
n. A psychologist;
o. A speech language pathologist;
p. A licensed social worker;
q. A Licensed Professional Counselor (LPCC);
r. A teacher of the visually impaired; or
s. A teacher of the deaf and hard of hearing.[~~a. An audiologist; or~~
~~b. A family therapist; or~~
~~c. A developmental interventionist; or~~
~~d. A developmental associate; or~~
~~e. A developmental assistant; or~~
~~f. A nurse; or~~
~~g. A LPN; or~~
~~h. A health aide; or~~
~~i. A nutritionist; or~~
~~j. A dietician; or~~
~~k. An occupational therapist; or~~
~~l. An occupational therapy assistant; or~~
~~m. An orientation and mobility specialist; or~~
~~n. A physical therapist; or~~
~~o. A physical therapist assistant; or~~
~~p. A psychologist; or~~
~~q. A speech language pathologist; or~~
~~r. A speech language pathologist assistant; or~~
~~s. A licensed social worker; or~~
~~t. A teacher of the visually impaired; or~~
~~u. A teacher of the deaf and hard of hearing;~~]

(f) Integrated disciplines center-based service shall be [~~an intervention~~] provided by an agency that is approved by the Department for Public Health[~~Commission for Children with Special Health Care Needs~~] to be qualified to offer services:

1. By at least three (3) of the following disciplines working together in a group setting who qualify in accordance with 902 KAR 30:150 Section 2(1)(c), (g), (j), (n)[~~911 KAR 2:150~~]:

a. Developmental interventionist [~~or developmental interventionist associate~~]; [~~or~~]

b. Occupational therapist; [~~or~~]

c. Physical therapist; or

d. Speech therapist; and

2. At least[~~Where all~~] three (3) disciplines shall be scheduled and present, except in routine absences due to sickness or other conflicts;

3. The providers[~~disciplines~~] shall give evidence of transdisciplinary planning and practice;

4. If integrated discipline center-based service is[~~Where children have identified~~] in the IFSP [~~multiple disciplines~~], with the majority of the group make-up being children who need three (3) or more disciplines, except when approved by the Department for Public Health[~~Commission for Children with Special Health Care Needs~~]; then

5. [~~Where~~] Each child's record shall have a staff note from each discipline, except a staff note shall not be required from a discipline if[~~for those children where~~] the discipline is not identified in the IFSP as a needed service;

(g) Collateral service as provided in accordance with 902 KAR 30:200, Section 3(4)[~~shall be the provision of consultation and planning directed toward the needs of the child with professionals while attending the IFSP meeting, and consultation by and with the child's physician~~];

(h) Assistive technology in accordance with 902 KAR 30:001[~~911 KAR 2:100~~] and 30:130[~~911 KAR 2:140~~];

(i) Respite shall be a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs under the limitations of 902 KAR 30:200, Section 3(3)[~~911 KAR 2:200, Section 4~~];

(j) Transportation and related cost shall be the costs of travel that are necessary to enable an eligible child to receive early intervention services;

(k) Interpreters shall be used when necessary to assist the family in understanding the purpose of First Steps and the family's procedural safeguards during referral, eligibility determination activities, and IFSP meetings[~~services and procedures and shall be reimbursed when:~~

~~1. The service is identified on the IFSP;~~

~~2. The PSC has identified the vendor and established a link with the billing agent;~~

~~3. The vendor meets the qualifications generally accepted for that role in the community and meets all requirements of the agency who hires the interpreter for that role if an agency is involved.~~

~~(3) Rates for covered services shall be negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone: (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation describes the services that are provided and paid in the Kentucky Early Intervention system.

(b) The necessity of this administrative regulation: This regulation is necessary to eliminate confusion in the types of services provided and paid by the Kentucky Early Intervention System. The Kentucky Early Intervention System uses multiple funding streams to support the provision of services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652(5) requires the coordination of payment for early intervention services from federal, state, local and private insurance coverage, and the use of sliding fee scales.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(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 changes in this regulation remove redundant and obsolete language. Changes were also made to bring the state regulation into compliance with the federal regulations.

(b) The necessity of the amendment to this administrative regulation: The requirements and intent of the federal statute for state early intervention systems needed clarification. One amendment adds a new discipline as a provider of a covered service to address provider shortages. Other amendments reflect the current practices in the system.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.652(3) and (5) require the state to implement a statewide, comprehensive, interagency system of early intervention and to facilitate payment from multiple funding streams.

(d) How the amendment will assist in the effective administration of the statute: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice.

(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 to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for payment of covered services and participation in First Steps.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulations during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the content if the Individual Family Service Plan (IFSP), including the content of the IFSP and responsibility and accountability. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health to develop an Individual Family Service Plan the conforms to the federal requirements for the IFSP.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with federal statutes and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
902 KAR 30:180E

This emergency administrative regulation, 902 KAR 30:180E, Kentucky Early Intervention Program Procedural Safeguards, is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The U.S. Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the U.S. Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the U.S. Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:180E. Procedural safeguards[~~Kentucky Early Intervention Program mediation~~].

RELATES TO: 20 U.S.C. 1471-1485
STATUTORY AUTHORITY: KRS 194A.050, 200.650-676
EFFECTIVE: July 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions for procedural safeguards for facilities participating[~~of mediation used~~] in First Steps, Kentucky's Early Intervention System.

Section 1. Parental Rights. (1) Definitions of consent, native language, and personally identifiable information.
(a) Consent means:
1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent understands that the granting of consent is voluntary and may be revoked at any time;
(b) Native language, where used in reference to persons with limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible for or participating in First Steps;
(c) Personally identifiable means that information includes:
1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3 A personal identifier, such as the child's or parent's social security number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
(2) In accordance with 34 C.F.R. 300.560 through 300.576, the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.
(3) Prior written notice;
(a) Prior written notice shall be given to the parents of an eligible child no less than seven (7) days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.
(b) The notice shall be in sufficient detail to inform the parents about:
1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available to the parent; and
4. The complaint procedures under Part C regulations 34 C.F.R. 303.510-303.512, including a description of how to file a complaint and the required timelines under those procedures.
(c) The written prior notice shall be:
1. Written in language understandable to the general public; and
2. Provided in the native language of the parents, unless it is clearly not feasible to do so.
(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:
1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
2. The parent understands the notice; and
3. There is written evidence that the requirements of this paragraph have been met.
(e) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).
(4) Parent consent.
(a) Written parental consent must be obtained before:
1. Conducting the initial evaluation and assessment of a child; and
2. Initiating the provision of early intervention services.
(b) If consent is not given, the POE shall make reasonable efforts to ensure that the parent understands:
1. The nature of the evaluation and assessment or the services available; and
2. That the child will not receive the evaluation and assessment or services unless consent is given.
(5) The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 2. Representation of Children and Surrogate Parents. (1) Each POE shall ensure that the rights of an eligible child are protected if:
(a) No parent, as defined in 902 KAR 30:100 (23), can be identified;
(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or
(c) The child is a ward of the state under the laws of the state.
(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:
(a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;
(b) The rights of the parents have been terminated in accordance with state law; or
(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.
(3) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition

of parent under 902 KAR 30:001(23), shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in 902 KAR 30:001, Section 1(23)(a)-(d) to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4) A POE shall determine whether a child needs a surrogate parent and assign a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part C of IDEA, 34 C.F.R. Part 303, to make decisions about early intervention issues for a child. A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

(a) No individual can be identified as a parent as defined in 902 KAR 30:001(23);

(b) The POE, after reasonable efforts, cannot discover the whereabouts of the parents;

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

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 114311.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, such as:

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

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

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

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. A surrogate:

(a) Shall not be an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in the education or care of the child;

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

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

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

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent may represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) Any other rights established under this administrative regulation.

Section 3. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 34 C.F.R. 303.420.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints;

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;

(d) Mediators shall be trained in First Steps policies and procedures.

(3) The time table for the mediation process shall be:

(a) Within five (5) working days after a request for mediation is made to the department, the appointment of a mediator shall be made;

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision;

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation;

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department;

(4) Mediation resolutions may not conflict with state and federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;

Section 4. Due Process Procedures for Parents and Children. (1) Notice of provider's action shall be provided to the parent or guardian which shall include at least the following:

(a) A description of action by the provider with explanation, including a description of any options the provider considered and the reasons why those options were rejected;

(b) A description of each evaluation procedure, test, record report or other relevant factor the provider used as the basis for the action;

(c) A description of the parent or guardian's right to appeal and of the parent or guardian right to inspect provider records pertaining to the decision which is the subject of the notice of action.

(2) Appeal:

(a) At any time following receipt of a written notification by the provider relating to the identification, evaluation or provision of service to a child or anytime following a refusal by the provider to initiate a change in the identification, evaluation or service provided to a child, a parent or guardian may file an appeal with the Cabinet for Health and Family Services.

(b) Upon receipt of an appeal, the cabinet shall issue within five (5) days a notice of hearing conforming in accordance with KRS Chapter 13B.

(c) An administrative hearing shall be conducted within fifteen (15) days of receipt of an appeal by an impartial hearing officer appointed by the secretary of the cabinet.

(d) The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(e) A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the appellant and the cabinet within ten (10) days of the administrative hearing.

(f) All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

(g) A final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

(h) Any parent involved in an administrative hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

4. Obtain a written or electronic verbatim transcription of the proceeding; and

5. Obtain written findings of fact and decisions.

(i) Any proceeding for implementing the complaint resolution process in Section 3 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

(j) Any party aggrieved by the findings and decision regarding an administrative hearing has the right to bring a civil action in state or federal court under section 639(a)(1) of the Pub.L. 108-446.

(k) During the pendency of any proceeding involving a hearing under Section 4 of this administrative regulation, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

(3) State Complaint Procedures.

(a) The following procedures shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.320 through 303.460. The complaint must include:

1. A statement that the state has violated a requirement or the regulations in this part; and

2. The facts on which the complaint is based.

(b) The alleged violation must have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health unless a longer period is reasonable because:

1. The alleged violation continues for that child or other children; or

2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years before the date on which the complaint is received by the Department for Public Health.

(c) Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

1. Carry out an independent on-site investigation, if the agency determines that such an investigation is necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement the Kentucky Early Intervention System; and

4. Issue a written decision to the complainant that addresses each
allegation in the complaint and contains:

a. Findings of fact and conclusions; and

b. The reasons for the agency's final decision.

5. Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

6. Include procedures for effective implementation of the agency's final decision, if needed, including:

a. Technical assistance activities;

b. Negotiations; and

c. Corrective actions to achieve compliance.

7. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the Department for Public Health must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the sixty (60) calendar-day timeline using the complaint procedures described in this section.

8. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

a. The hearing decision is binding; and

b. The agency must inform the complainant to that effect.

9. A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the Department for Public Health.

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

(a) "RF-1 Statement of Assurances", November 2008;

(b) "RF-4 Refusal of Services", November 2008;

(c) "RF-15 Notice of Action", January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Mediation. (1) Mediation shall be adopted as an option to resolve complaints;~~

~~(2) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;~~

~~(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;~~

~~(4) The time table for the mediation process shall be:~~

~~(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;~~

~~(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;~~

~~(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation.~~

~~(d) At any time during the mediation process, a request for a due process hearing may be initiated;~~

~~(5) Mediation resolutions may not conflict with state or federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;~~

~~(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;~~

~~(7) Mediators shall be trained in First Steps policies and procedures.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedural safeguards required by Part C of the Individuals with Education Act, Pub.L. 108-446, Section 639.

(b) The necessity of this administrative regulation: Procedural safeguards are a required state component under 34 C.F.R. 303.170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a description of the actions and requirements for the agency, early intervention provider and family while implementing procedural safeguards.

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

(a) How the amendment will change the existing administrative regulation: The amendments for this regulation reflect the state agency reorganization and practices in the districts.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to correctly reflect the state agency that is promulgating regulations and to be in compliance with federal statute and regulation.

(c) How the amendment conforms to the content of the autho-

rizing statutes: KRS 200.650 to 200.676 requires the cabinet to administer all funds appropriated to implement administrative regulations and promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include: The Cabinet for Health and Family Services (one state agency), 15 points of entry/local lead agencies, 1,500 providers and 6,000 children and their families.

(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 Cabinet for Health and Family Services will need to be prepared to implement mediation and due process if this is requested by a family when trying to resolve conflicts surrounding the early intervention services for their child. The Points of Entry/Local Lead Agencies will need to understand how to protect eligible children's rights and process a request for mediation and due process with the Cabinet. Providers and families will need to know how to request mediation or due process from the Cabinet. All stakeholders will need to learn how to file written complaints.

(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 new costs to implement this regulation. The Cabinet has legal services as part of the administrative structure of the agency.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Families and providers will have rights protected and mediation and/or due process available when needed through the state lead agency.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart E-Procedural Safeguards outlines the states responsibilities in assuring the rights of children and parents who receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.672 charges the Cabinet for Health and Family Services, Department for Public Health to protect the rights of disabled child, parent, or guardian being served by the system.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding procedural safeguards the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
902 KAR 30:200E

This emergency administrative regulation, 902 KAR 30:200E, Kentucky Early intervention program assessment, service planning and assistive technology is necessary for compliance to KRS 200.650, which requires the cabinet to comply with federal law and regulation as it pertains to early intervention services for infants and toddlers with disabilities and their families. The U.S. Department of Education determined that the Kentucky application for federal Part C funds was not in compliance resulting in the issuance of conditional approval of the application. Kentucky assured that state regulations would be amended and in compliance with federal law and regulation by June 30, 2010. Should Kentucky not satisfy the terms of the conditional approval, approximately $5.5 million dollars will be withheld by the U.S. Department of Education. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the Kentucky Early Intervention System operating procedures within the timelines set by the U.S. Department of Education. The ordinary administrative regulation is identical to the emergency administrative regulation.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

902 KAR 30:200E. Coverage and payment for [~~Kentucky Early Intervention Program~~] Services.

RELATES TO: 34 C.F.R. 303.520, 303.521, 303.527, 303.528, 20 U.S.C. 1371-1485

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(3), (7), 34 C.F.R. 303.520-303.528, 20 U.S.C. 1476(a)(12), 1478[~~, EO 2004-726~~]

EFFECTIVE: July 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an ongoing[~~annual~~] review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30[~~911 KAR Chapter 2~~];

(2)(a) Meet the qualifications for a professional or paraprofessional established in 902 KAR 30:150[~~911 KAR 2:150~~]; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150[~~911 KAR 2:150~~];

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall attend training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;

(4) Agree to provide First Steps services as authorized by[~~according to~~] an individualized family service plan as required in 902 KAR 30:130[~~911 KAR 2:130~~];

(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to ensure[~~insure~~] compliance with 902 KAR Chapter 30[~~911 KAR Chapter 2~~];

(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided.

(1) A charge submitted to the Department for Public Health shall be the provider's usual and customary charge for the same service.

(2) The fixed upper limit for services shall be as follows:

(a) [~~Primary~~] Service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person in the family's life.

1. In the office, the fee shall be sixty-two (62)[~~sixty-one (61)~~] dollars and fifty (50) cents per hour of service.

2. In the home or community site, the fee shall be eighty-five (85)[~~eighty-three (83)~~] dollars per hour of service.

(b) [~~Initial service coordination. Initial service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person.~~

~~1. In the office, the fee shall be sixty-eight (68) dollars per hour of service.~~

~~2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of service.~~

~~(c)~~] Primary level evaluation. The developmental component of the primary level evaluation for a child without an established risk [~~condition,~~] shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be $270 per service event.

2. In the home or community site, the fee shall be $270 per service event.

(c)[~~(d)~~] Five (5) Area Assessment. The developmental component of the primary level evaluation for the child with an established risk shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be $175 per service event;

2. In the home or community-based site, the fee shall be $175 per service event.

(d)[~~(e)~~] Record review. A record review shall be provided by a Department for Public Health approved team. The fee shall be $300 per service event.

(e)[~~(f)~~] Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified physician, the fee shall be $1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be $1,100 per service event.

(f) Early[~~3. In the office or center-based site without a board certified physician, the fee shall be $400 per service event.~~

~~4. In the community site without a board certified physician, the fee shall be $400 per service event.~~

~~(g) Therapeutic~~] intervention, service assessment, or collateral services in accordance with Section 3(1), (2), (4) and (5)[~~(3), (4), (6) and (7)~~] of this administrative regulation:

1. For an audiologist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

2. For a family therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) per hour of service.

3. For a licensed psychologist, a psychological practitioner or a licensed professional clinical counselor[~~ or certified psychologist with autonomous functioning~~]:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars[~~$139~~] per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention

including cotreatment shall be eighty-nine (89) dollars[~~$203~~] per hour of service.

4. For a certified psychological associate:

a. In the office or center-based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars[~~$104~~] per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars[~~$153~~] per hour of service.

5. For a developmental interventionist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

6. For a developmental associate[~~:a.~~] In a[~~the office or~~] center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention service including cotreatment shall be twenty-four (24)[~~forty-five (45)~~] dollars per hour of service.[~~; or~~

~~b. In the home or community site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be sixty-eight (68) dollars per hour of service.~~]

7. For a registered nurse:

a. In the office or center based site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

8. For a licensed practical nurse:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be twenty-four (24) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be thirty-two (32) dollars per hour of service.

9. For a nutritionist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

10. For a dietitian:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

11. For an occupational therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

12. For an occupational therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars per hour of service.

13. For an orientation and mobility specialist:

a. In the office or center-based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

14. For a physical therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

15. For a physical therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars per hour of service.

16. For a speech therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

17. For a social worker:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

18. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

19. For a teacher of the visually impaired:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

20. For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early[~~therapeutic~~] intervention.

21. For an assistive technology specialist:

a. In the office or center based site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention

including cotreatment shall be eighty-one (81) dollars per hour of service.

22. For an optometrist or ophthalmologist providing collateral service in an office of center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.

(g)[(h)] Respite shall be seven (7) dollars and sixty (60) cents per hour.

(3)(a) For early[therapeutic] intervention, service assessment, or collateral services, units shall be determined using the beginning and ending time for a service [documented in staff notes].

1. Services shall be documented in the First Steps online data management system and shall include a list of all those present during the session, a description of the early intervention service(s) provided, the child's response, and future action to be taken.[The staff notes shall include:

a. The child's name and Central Billing and Information System number;

b. Time in and time out;

c. Location;

d. Method of delivery;

e. A description of what happened during the session, the child's response, and future action to be taken;

f. Staff title and signature; and

g. Date.]

2. The hours[units] shall be computed as follows:

a. Fifteen (15) to twenty-nine (29) minutes is equal to 0.25 hours[one (1) unit];

b. Thirty (30) to forty-four (44) minutes is equal to 0.50 hours[two (2) units];

c. Forty-five (45) to fifty-nine (59) minutes is equal to 0.75 hours[three (3) units]; and

d. Sixty (60) to seventy-four (74) minutes is equal 1.00 hour[four (4) units].

(b) For service coordination services, hours[units] shall be determined using the beginning and ending time for a service documented in staff notes in accordance with paragraph (a) of this subsection.

1. The hours[units] shall be computed as follows:

a. One (1) to twenty-two (22) minutes is equal to 0.25 hours[one (1) unit];

b. Twenty-three (23) to thirty-seven (37) minutes is equal to 0.50 hours[two (2) units];

c. Thirty-eight (38) to fifty-two (52) minutes is equal to 0.75 hours[three (3) units]; and

d. Fifty-three (53) to sixty-seven (67) minutes is equal to 1.00 hour[four (4) units].

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the total number of hours spent[number of units used].

(4) A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. No individual provider shall be reimbursed for participation on the intensive evaluation team.

(5) Payment for assistive technology devices shall be made in accordance with procedures[those] approved by the Department for Public Health.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service shall be thirty-two (32) dollars per child per hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Limitations. (1) [For primary service coordination, payment shall be limited to no more than ten (10) hours (or forty (40) units) per child per six (6) month period unless preauthorized by the Department for Public Health. A prior authorization request to exceed service coordination limits shall be sent to the Department for Public Health, in accordance with Section 4 of this administrative regulation.

(2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(3)] For service assessment:

(a) Payment shall be limited to no more than two (2) [and one-half (2 1/2)] hours per child per discipline per assessment unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(b) Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per child, unless additional hours are necessary based on the reasons listed in subsection (c) and documented in accordance with 902 KAR 30:130 Section 1(5)(a),(b),(c) from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation; and[.]

(c)1. A service assessment payment shall not be made for the provision of routine early[therapeutic] intervention services by a discipline in the general practice of that discipline.

2. Payment for a [unit of] service assessment shall be restricted to the need[needs] for additional testing due to new concerns or significant change in the child's status[or other activity by the discipline that go beyond routine practice].

3. Routine activity of assessing progress and outcomes shall be billed as early[therapeutic] intervention.

(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent, and shall not exceed two (2) hours for each event.

(e) Payment for a service assessment of up to two (2) hours for each event for the purpose of the annual and exit progress monitoring five (5) area assessment shall be made to the primary service provider as approved by the IFSP team.

(2)[(4)] For early[therapeutic] intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as follows:

(a) For office, center or home and community sites:

1. Payment shall be limited to no more than one (1) hour per day per child per discipline by a:

a. Professional meeting the qualifications established in 911 KAR 2:150; or

b. Paraprofessional meeting the qualifications established in 911 KAR 2:150.

2. Payment shall be limited to no more than twenty-four (24) hours[ninety-six (96) units] for a single discipline and thirty-six (36) hours[144 units] for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional forty-eight (48) hours[192 units] during a six (6) month period..

(b) For group:

1. Children shall not be eligible for both group and individual therapy in the same developmental domain concurrently on the Individualized Family Services Plan.

2. Group providers shall be preapproved by the Department for Public Health.

3. The ratio of staff to children in group early[therapeutic] intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 902 KAR 30:130, Section 2(6) or (7)[911 KAR 2:130, Section 2(6) or (7)].

(e) Payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

(3)[(5)] For respite, payment shall:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(4)[~~(6)~~] For collateral services, payment for collateral services shall be a billable service for First Steps providers, who are providing early intervention services for the eligible child through an IFSP and paid by the First Steps system:

(a) Length of an IFSP meeting shall be limited to no more than one (1) hour[~~four (4) billable units~~];

(b) Attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and primary service provider[~~two (2) professionals or paraprofessionals~~] selected by the IFSP team;

(c) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 902 KAR 30:120, Section 1(4)(e)2b[~~911 KAR 2:120, Section 1(4)(e)2b~~]. Payment shall be at the collateral services rate for the discipline that the evaluator represents; and

(d) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided.

(5)[~~(7)~~] For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(6)[~~(8)~~] Unless prior authorized by the Department for Public Health due to a shortage of direct service providers[~~primary level evaluators~~], a primary level evaluator shall not be eligible to provide early[~~therapeutic~~] intervention to a child whom he evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Authorization[~~Requests~~] for payment for early[~~therapeutic~~] intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the cabinet or its designee[~~Payment Authorization Coordinator~~], as determined by the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 and approved[~~,~~] prior to the service being delivered and shall include the following:

(a) A service exception request completed in the First Steps online data management system;

(b)[~~describing:~~

~~1. Current IFSP team members;~~

~~2. Current services;~~

~~3. Description of current development status;~~

~~4. Family input;~~

~~5. Additional services requested; and~~

~~6. Rationale for the additional services;~~

~~(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e)1, which shall include the following:~~

~~1. History;~~

~~2. Physical exam;~~

~~3. Hearing screening;~~

~~4. Vision screening; and~~

~~5. Other available reports from medical specialists;~~

~~(c) Developmental evaluation reports in accordance with 911 KAR 2:120, Section 1(4)(e)2, which shall include the following:~~

~~1. Primary level evaluation report; and~~

~~2. Intensive level evaluation report, if applicable;~~

~~(d) IFSP team member reports completed within the last twelve (12) months by the disciplines involved, including:~~

~~1. Assessments; and~~

~~2. Six (6) month progress reports;~~

~~(e) IFSP documents from the last twelve (12) months, including amendments;~~

~~(f)~~] Payor of Last Resort Form, along with available supporting documentation, including:

1. Requests submitted to other payors; and

2. Responses from payor sources;

(c)[~~(g)~~] Transfer of Skills Form; and

(d)[~~(h)~~] Service Planning Activity Matrix Form.

(2) [~~Requests for payment for service coordination services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, prior to the service being delivered and shall include:~~

~~(a) A service exception request as required by subsection (1)(a) of this section;~~

~~(b) A copy of the current IFSP; and~~

~~(c) A detailed description of how and if the additional units are to be used.~~

~~(3)~~] If the IFSP team is not in agreement with the decision of the record review team:

(a) A request for further review shall be submitted to the Department for Public Health; and

(b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.

(3)[~~(4)~~] If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:

(a) The child's IFSP team shall be asked to reconvene for a IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and

(b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for services based on a sliding fee scale, except that a charge shall not be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing available sources of funding for early intervention services; and

(b) Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be explained to the family by the service coordinator;

(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time early intervention[~~therapeutic~~] services are authorized, and continuing for the duration of participation in early intervention services, as determined by the:

1. Level of family gross income identified on the last Federal Internal Revenue Service statement or check stubs form the four (4) most recent consecutive pay periods, as reported by the family; and

2. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

a. Below 200 percent of poverty, there shall be no payment;

b. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;

c. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;

d. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;

e. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or

f. From 600 percent of poverty and over, the payment shall be $100 per month of participation;

(c) Not apply to a child receiving Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefits;

(d) Not apply to a family who receives only evaluation, assessment, service coordination services or IFSP development in the initial calendar month of eligibility. The [~~initial~~] service coordinator shall notify the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~] immediately if the

initial IFSP date is different than the month that early[~~therapeutic~~] intervention services are started;

(e) Not apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~] in accordance with paragraph (g)1 and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs [~~such~~] as an unexpected hospitalization;

(f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development if the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the Department for Public Health Family Share Administrator[~~financial case manager~~] immediately if this situation exists so that the family is not assessed a family share cost; and

(g) Not prevent a child from receiving services if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

1. The service coordinator shall submit to the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~], on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

2. The family shall undergo a financial review by the Department for Public Health that may:

a.(i) Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities; and

(ii) Result in a calculation of a new family[-] share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b)2 of this subsection. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family[-] share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.[~~; and~~

~~(h) Not apply to a family who chooses to use their private insurance if the amount of the insurance monies received and applied to the family's services in the calendar year is equal to or greater than the sum of the obligated amount of family share during the same calendar year. Refunding of family share collected up to the amount of the private insurance reimbursement shall occur after the end of a calendar year.~~]

(4) Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income will[~~shall~~] result in a change in the amount of the obligated family share payment. [~~If a change in the family share category occurs, it shall become effective the month following the month the change was reported.~~]

(5) A family that refuses to have its income verified shall be assessed a family share payment of $100 per month of participation.

(6) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(7) If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.

(8) A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(9) With the exception of a discipline identified in 902 KAR 30:130, Section 2(7)(g)2j or k[~~911 KAR 2:130, Section 2(9)(g)3j, k, or l~~], a provider shall bill a third-party insurance, if any, for an early[~~a therapeutic~~] intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted through the First Steps data management system[~~with the First Steps bill~~].

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

(a) "Transfer of Skills Form", November 2008 edition; and

(b) "Service Planning Activity Matrix Form", November 2008 edition.[~~"Technology-assisted Observation and Teaming Support form (TOTS)", November 2008 edition, is incorporated by reference.~~]

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rates to be paid to providers for the provision of approved services (i.e. Physical Therapy, Occupational Therapy), sets forth limitations for billable services, and establishes processes for requesting services beyond set parameters and for assessing and collecting family participation payments.

(b) The necessity of this administrative regulation: The First Steps Program operates on a fee-for-service system requiring the establishment of rates for covered services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps Program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: This administrative regulation describes how the rate structure used by the Cabinet for Health and Family Services when contracting with service providers as well as the sliding fee scale.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this administrative regulation provides updated rates for certain providers, requires that early intervention providers be in compliance with regulations and that providers maintain records that can be submitted to the department for monitoring. Rates for specific services are established and/or modified. Obsolete language is removed.

(b) the necessity of the amendment to this administrative regulation: The revisions to this administrative regulation are necessary to establish business rules for providers and establish rates of payments for services rendered. Obsolete language is removed to reflect current program structure and provide clarity.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services. KRS 200.650(6) and KRS 200.652(3) require a statewide comprehensive early intervention system that is in compliance with federal statute and regulation.

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

tion of the statutes: These amendments will help to assure appropriate compensation to First Steps service provider and will assure that the Cabinet for Health and Family Services is administering the sliding fee scale in a manner consistent with federal regulation and intent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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: Providers of the amended rates will need to adjust their claims to reflect the changes. Licensed Professional Clinical Counselors (LPCC) and optometrists that want to provide service in First Steps will need to enroll.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately $40 million dollars. The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement 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 change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676.

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? There will be no revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.520 through 303.528 outlines the federal policies and procedures related to financial matters. It states that First Steps must be the payor of last resort. It also provides provisions for charging a family participation fee. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.674 charges the Cabinet for Health and Family Services, Department for Public Health in the use of early intervention funds.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation, Kentucky is in full compliance with the federal requirements to ensure First Steps is the payor of last resort for early intervention services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
907 KAR 1:012E

This emergency administrative regulation is being promulgated to eliminate Medicaid coverage of care related to conditions acquired by patients in a hospital unrelated to the condition for which the patient was admitted to the hospital as well as eliminate coverage of events that never should have occurred. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program; protect the health, welfare, and safety of Medicaid inpatient hospital patients; and meet a deadline established by federal regulation. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Emergency Amendment)

907 KAR 1:012E. Inpatient hospital service coverage [~~services~~].

RELATES TO: KRS 205.520, 42 U.S.C. 1395ww
STATUTORY AUTHORITY: KRS 194A.010(1), (2), 194A.030(2), 194A.050, 205.520(3), 42 C.F.R. 440.10, 440.210, 440.220, 42 U.S.C. 1396, a, b, d, r-4, Pub.L. 111-148
EFFECTIVE: July 1, 2010
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 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to inpatient hospital services for which payment shall be made by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Critical access hospital" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and designated as a critical access hospital by the department.

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

(4)[~~(2)~~] "Emergency" means a condition or situation which requires an emergency service pursuant to 42 C.F.R. 447.53.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; or

(b)1. Which is recognized by the Centers for Medicare and Medicaid Services as a hospital-acquired condition.

(7) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(8)[~~(3)~~] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub.L. 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(10)[~~(4)~~] "Nonemergency" means a condition or situation which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(11) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180.

(12) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240.

Section 2. Prior Authorization. To be covered by the department:

(1) Prior to a nonemergency admission, including an elective admission or a weekend admission the department shall have made a determination that the nonemergency admission was:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and.

(2) Within seventy-two (72) hours after an emergency admission, the department shall have made a determination that the emergency admission was:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

Section 3. Covered Admissions. (1) The department shall reimburse for an admission primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis.

(2) [~~shall be covered.~~

~~(2) An admission relating to only observation or diagnostic purposes shall not be covered.~~

~~(3)~~] Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 4. Noncovered Services. Inpatient hospital services not covered shall include:

(1) The department shall not reimburse an acute care hospital reimbursed via a diagnosis-related group (DRG) methodology, a critical access hospital, a long-term acute care hospital, a psychiatric hospital, a rehabilitation hospital, or a Medicare-designated psychiatric or rehabilitation distinct part unit for the following:

(a) A service which is not medically necessary including television, telephone, or guest meals;

(b)[~~(2)~~] Private duty nursing;

(c)[~~(3)~~] Supplies, drugs, appliances, or equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient;

(d)[~~(4)~~] A laboratory test not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists;

(e)[~~(5)~~] Private accommodations unless medically necessary and so ordered by the attending physician; or

(f)[~~(6)~~] The following listed surgical procedures, except if a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

1.[~~(a)~~] Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision), or muscle;

2.[~~(b)~~] Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts or condylomas, anterior nose bleeds, or cervix;

3.[~~(c)~~] Circumcision;

4.[~~(d)~~] Dilation: dilation and curettage (diagnostic or therapeutic nonobstetrical); dilation or probing of lacrimal duct;

5.[~~(e)~~] Drainage by incision or aspiration: cutaneous, subcutaneous, or joint;

6.[~~(f)~~] Pelvic exam under anesthesia;

7.[~~(g)~~] Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, or subcutaneous fistulas;

8.[~~(h)~~] Extraction: foreign body or teeth;

9.[~~(i)~~] Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter);

10.[~~(j)~~] Hymenotomy;

11.[~~(k)~~] Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure or fractures;

12.[~~(l)~~] Meatotomy or urethral dilation, removal calculus and drainage of bladder without incision;

13.[~~(m)~~] Myringotomy with or without tubes, otoplasty;

14.[~~(n)~~] Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy;

15.[~~(o)~~] Removal; IUD, fingernail or toenails;

16.[~~(p)~~] Tenotomy hand or foot;

17.[~~(q)~~] Vasectomy; or

18.[~~(r)~~] Z-plasty for relaxation of scar or contracture.

(g) A service for which Medicare has denied payment;

(h) An admission relating only to observation or diagnostic purposes; or

(i) Cosmetic surgery, except as required for prompt repair of accidental injury or for the improvement of the functioning of a

malformed or diseased body member.

(2) The department shall not reimburse an acute care hospital reimbursed via a DRG-methodology pursuant to 907 KAR 1:825 for the following:

(a) Treatment for or related to a hospital-acquired condition;

(b) A never event; or

(c) Treatment related to a never event.

(3) A hospital shall not bill:

(a) A recipient for:

1. Treatment for or related to a hospital-acquired condition;

2. A never event; or

3. Treatment related to a never event;

(b) The Cabinet for Health and Family Services for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Cabinet for Health and Family Services;

2. A never event associated with a child in the custody of the Cabinet for Health and Family Services; or

3. Treatment related to a never event associated with a child in the custody of the Cabinet for Health and Family Services;

(c) The Department for Juvenile Justice for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Department for Juvenile Justice;

2. A never event associated with a child in the custody of the Department for Juvenile Justice; or

3. Treatment related to a never event associated with a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for:

(a) Treatment for or related to a hospital-acquired condition;

(b) A never event; or

(c) Treatment related to a never event.

Section 5. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 6. Incorporation by Reference. (1) The "CMS Manual System Pub.L. 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009, is incorporated by reference.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Hunter or Darlene Burgess

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid inpatient hospital coverage provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Medicaid inpatient hospital service provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1), and 205.520(3) by establishing Kentucky Medicaid inpatient hospital service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1), and 205.520(3) by establishing Kentucky Medicaid inpatient hospital service provisions.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates Medicaid coverage of care related to conditions acquired by patients in a hospital unrelated to the condition for which the patient was admitted to the hospital and care associated with events which never should have happened. The policy only applies to acute care hospitals as the Centers for Medicare and Medicaid Services (CMS) and exempts miscellaneous other hospital types from the policy. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with guidance from the Centers for Medicare and Medicaid Services (CMS). The amendment is also necessary to provide a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem (while in the hospital) unrelated to the patient's admitting problem. Lastly, the policy is not currently mandated by CMS but will be mandated for state Medicaid programs effective July 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment, which addresses Medicaid inpatient hospital coverage, conforms with KRS 194A030(2), which establishes the Department for Medicaid Services as the singles state agency authorized to administer Title XIX of the Social Security Act. The amendment also confirms with KRS 194A.050(1) which charges the Cabinet for Health and Family Services secretary to "…adopt...administrative regulations necessary under applicable laws to protect, develop, and maintain the health…of the individual citizens of the Commonwealth…"

(d) How the amendment will assist in the effective administration of the statutes: The amendment is expected to assist in the effective administration of KRS 194A.050(1) by providing a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem (while in the hospital) unrelated to the patient's admitting problem.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to acute care hospitals as the Centers for Medicare and Medicaid Services (CMS) and exempts miscellaneous other hospital types from the policy. Currently these number approximately 65 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. No compliance action is mandated; however, acute care hospitals will not be reimbursed for treatment of a condition a patient acquires, unrelated to their admitting condition, while in the hospital or for care associated with a never event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The Department for Medicaid Services (DMS) hopes that the incidence rate of hospital-acquired conditions and never events will drop as a result of the amendment; thus, benefiting inpatient hospital patients.

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

(a) Initially: As a result of the amendment, DMS will experience minimal administrative cost in the form of Medicaid Management Information System (MMIS) programming changes. Conversely, the Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(b) On a continuing basis: DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and

federal shares combined) annually.

(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. The amendment is expected to reduce expenditures.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that long-term acute care hospitals, rehabilitation hospitals, psychiatric hospitals, critical access hospitals and Medicare designated psychiatric or rehabilitation distinct part units are exempt from the hospital-acquired condition and never event policy as the Centers for Medicare and Medicaid Services (CMS) exempts them from the policy.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(1), Pub. L. 111-148 (Section 2702), 42 U.S.C. 1395ww(d)(4)(D), 42 C.F.R. 440.210 and 42 C.F.R. 440.220.

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. State Medicaid programs must provide inpatient hospital services other than in institutions for mental diseases to every covered group of Medicaid beneficiaries. Pub.L. 111-148, Section 2702 states, "(a) IN GENERAL. - The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall identify current State practices that prohibit payment for health care acquired conditions and shall incorporate the practices identified, or elements of such practices, which the Secretary determines appropriate for application to the Medicaid program in regulations. Such regulations shall be effective as of July 1, 2011, and shall prohibit payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations. The regulations shall ensure that the prohibition on payment for health care-acquired conditions shall not result in a loss of access to care or services for Medicaid beneficiaries."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The mandate requires coverage of inpatient hospital services. The amendment regarding hospital-acquired conditions has been mandated to become effective July 1, 2011 and is currently "encouraged" by the Centers for Medicare and Medicaid Services (CMS) via a letter to state Medicaid directors numbered "SMDL 08-004."

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

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 Medicaid Services (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(1), 42 C.F.R. 440.210, and 42 C.F.R. 440.220.

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? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? As a result of the amendment, DMS will experience minimal administrative cost in the form of Medicaid Management Information System (MMIS) programming changes. Conversely, the Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated for subsequent years. DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

STATEMENT OF EMERGENCY
907 KAR 1:014E

This emergency administrative regulation is being promulgated to curtail excessive and inappropriate utilization of care in emergency departments in accordance with KRS 205.8453 and 205.6310 and establish that the Department for Medicaid Services shall not reimburse for a nonemergency service provided to a lock-in recipient if the service is provided in an emergency department of a hospital or is provided by a hospital that is not the designated hospital for the lock-in recipient. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program; thus, protecting the health, welfare, and safety of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Emergency Amendment)

907 KAR 1:014E. Outpatient hospital services.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6310, 205.8453[~~194.050~~]

EFFECTIVE: July 1, 2010

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 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 the provisions relating to outpatient hospital services for

which payment shall be made by the medical assistance program on behalf of the categorically needy and medically needy.

Section 1. Definitions. (1) "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;

5. The Acquired Brain Injury Long Term Care Waiver Program in accordance with 907 KAR 3:210; or

6. The Michelle P. Waiver Program in accordance with 907 KAR 1:835; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

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

(3) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(4) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).

(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.

(6)[~~(5)~~] "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 and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. 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.

(7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.

(8)[~~(6)~~] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9)[~~(7)~~] "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

(10)[~~(8)~~] "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 patient status criteria established in 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.

(11) "Recipient" is defined by KRS 205.8451(9).

(12)[~~(9)~~] "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Coverage Criteria. (1) To be covered by the department:

(a) The following services shall be prior authorized and meet the requirements established in paragraph (b)1, 2, and 3[~~and 2~~] of this subsection:

1. Magnetic resonance imaging (MRI);

2. Magnetic resonance angiogram (MRA);

3. Magnetic resonance spectroscopy;

4. Positron emission tomography (PET);

5. Cineradiography/videoradiography;

6. Xeroradiography;

7. Ultrasound subsequent to second obstetric ultrasound;

8. Myocardial imaging;

9. Cardiac blood pool imaging;

10. Radiopharmaceutical procedures;

11. Gastric restrictive surgery or gastric bypass surgery;

12. A procedure that is commonly performed for cosmetic purposes;

13. A surgical procedure that requires completion of a federal consent form; or

14. An unlisted procedure or service; and

(b) An outpatient hospital service, including those identified in paragraph (a) of this subsection, shall be:

1. Medically necessary; and

2. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

3. For a lock-in recipient, except for a screening to determine if the lock-in recipient has an emergency medical condition in accordance with Section 3(2) of this administrative regulation, only provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677.

(2) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service;

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(3) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(4) The following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician,

or if applicable, a duly-licensed dentist:

(a) A diagnostic service ordered by a physician;

(b) A therapeutic service, except for occupational therapy, ordered by a physician;

(c) An emergency room service provided in an emergency situation as determined by a physician; or

(d) A drug, biological, or injection administered in the outpatient hospital setting.

(5)[~~(4)~~] A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

(6) The department shall cover:

(a) A screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition; or

(b) An emergency service to a lock-in recipient if the department determines that the lock-in recipient had an emergency medical condition when the service was provided.

Section 3. Hospital Outpatient Services Not Covered by the Department. (1) The following services shall not be considered a covered hospital outpatient service:

(a)[~~(1)~~] An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;

(b)[~~(2)~~] A service for which:

1.[~~(a)~~] An individual has no obligation to pay; and

2.[~~(b)~~] No other person has a legal obligation to pay;

(c)[~~(3)~~] A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medical Assistance Program for hospital outpatient services;

(d)[~~(4)~~] A drug, biological, or injection purchased by or dispensed to a patient; or

(e)[~~(5)~~] A routine physical examination.

(f) A nonemergency service, other than a screening in accordance with subsection (2) of this section, provided to a lock-in recipient:

1. In an emergency department of a hospital; or

2. If provided by a hospital that is not the lock-in recipient's designated hospital pursuant to 907 KAR 1:677.

Section 4. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit package;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or

2. Optimum Choices benefit package.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit package;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or

2. Optimum Choices benefit package.

(3) The therapy limits established in subsections (1) and (2) of this section shall be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(a) To request an override:

1. The provider shall telephone or fax the request to the department; and

2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(4) Except for recipients under age twenty-one (21), prior authorization shall be required for each visit that exceeds the limit established in subsections (1) and (2) of this section.

(5) The limits established in subsections (1) and (2) of this section shall not apply to a recipient under twenty-one (21) years of age.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Hunter, Darlene Burgess, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid outpatient hospital service provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid outpatient hospital service provisions.

(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 Medicaid outpatient hospital service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing Medicaid outpatient hospital service provisions.

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

(a) How the amendment will change this existing administrative regulation: DMS is amending outpatient hospital coverage related to lock-in program recipients. The lock-in program is a Medicaid program to curtail excessive and inappropriate utilization of Medicaid services and is established via 907 KAR 1:677. The amendment establishes that DMS will not reimburse for nonemergency services provided to a lock-in recipient in an emergency department of a hospital or if provided by a hospital that is not the lock-in recipient's designated hospital. Additionally, DMS will reimburse for a screening of a lock-in recipient to determine if the individual has an emergency medical condition and will reimburse for emergency services if the lock-in recipient has an emergency medical condition.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to control excessive Medicaid utilization in accordance with KRS 205.8453 and 205.6310 and to ensure the availability of funding necessary for the continued operation of the Medicaid program; thus, protecting the health, safety, and welfare of Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(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 hospitals providing outpatient services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Outpatient hospitals will have to ensure, when providing care for a lock-in recipient, that they do not provide MRIs, MRAs, PETs, and related to the recipient if they are not the

designated hospital for that lock-in recipient.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outpatient hospitals as a whole may benefit in that Medicaid funds which have been expended due to excessive utilization with lock-in recipients will be reduced; thus, preserving Medicaid funds for appropriate utilization and reimbursement.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates minimal administrative costs associated with Medicaid Management Information System (MMIS) programming to implement the amendment initially. DMS anticipates reducing expenditures by approximately $100,000 (federal and state combined) annually by implementing the amendment.

(b) On a continuing basis: DMS does not anticipate subsequent year costs related to the amendment and estimates reducing expenditures by approximately $100,000 (state and federal combined) annually as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds of general and agency 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 amendment, including the amendment after comments, does not establish any fees, nor does it directly or indirectly increase any fees

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment, including the amendment after comments, does not establish or increase any fees.

(9) Tiering: Is tiering applied? Critical access outpatient hospital reimbursement differs from other outpatient hospital reimbursement as critical access hospital reimbursement is established in federal regulation. The amendment is applied to lock-in recipients only as they are recipients which have been identified as excessively or in appropriately utilizing Medicaid services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient hospital services including the county and state owned are affected by this amendment. The Department for Medicaid Services will also be affected by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050, 205.520, 205.560, 205.6310, 205.8453, 42 U.S.C. 1396d(a)(2)(A), 42 C.F.R. 440.20, 42 C.F.R. 440.210, and 42 C.F.R. 440.220.

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 amendment is not expected to generate additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates minimal administrative costs associated with Medicaid Management Information System (MMIS) programming to implement the amendment initially. DMS anticipates reducing expenditures by approximately $100,000 (federal and state combined) annually by implementing the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate subsequent year costs related to the amendment and estimates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing this amendment.

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. The amendment is not mandated, but 42 U.S.C. 1396d(a)(2)(A), 42 C.F.R. 440.20, 440.210 and 440.220 address Medicaid outpatient hospital service requirements.

2. State compliance standards. KRS 205.8453 charges the Cabinet for Health and Family Services and the Department for Medicaid Services with instituting “other measures necessary or useful in controlling fraud and abuse.” KRS 205.6310 states, “The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency;

(3) Reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;

(4) Except for emergency room services rendered to children under the age of 6, prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency; and

(5) The provisions of this section shall apply to any managed care program for Medicaid recipients.”

3. Minimum or uniform standards contained in the federal mandate. Outpatient hospital services are required services for the categorically needy. To the extent that outpatient hospital services constitute ambulatory services as defined in a state Medicaid plan, they also are required if the plan covers the medically needy. Outpatient hospital services are defined as preventive, diagnostic, therapeutic, rehabilitative, or palliative services furnished to outpatients in an institution licensed or formally approved as a hospital by an officially designated authority for state standard setting. The institution must meet requirements for participation in Medicare and Medicaid as a hospital, and services must be furnished under the direction of a physician or a dentist. A state's Medicaid agency may exclude from the definition of outpatient hospital services items and services not generally furnished by most hospitals in the state.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment

does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
907 KAR 1:015E

This emergency administrative regulation is being promulgated to curtail excessive and inappropriate utilization of care in emergency departments in accordance with KRS 205.8453 and 205.6310, establish a flat rate of twenty-five (25) dollars for a screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition, and establish that the Department for Medicaid Services shall not reimburse for a nonemergency service provided to a lock-in recipient if the service is provided in an emergency department of a hospital or is provided by a hospital that is not the designated hospital for the lock-in recipient. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program; thus, protecting the health, welfare, and safety of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Emergency Amendment)

907 KAR 1:015E. Payments for outpatient hospital services.

RELATES TO: KRS 205.520, 205.637, 216.380, 42 C.F.R. 400.203, 413.70, 440.2, 440.20(a), 447.321, 42 U.S.C. 1395l(h), 1396r-8(a)(7)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637(3), 205.6310, 205.8453, 42 U.S.C. 1396a, 1396b, 1396d[~~, EO 2004-726~~]

EFFECTIVE: July 1, 2010 at 4 p.m.

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.

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

(3) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).

(4) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(5)[~~(4)~~] "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).

(6) "Flat rate" means a set and final rate representing reimbursement in entirety with no subsequent cost settling.

(7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.

(8) "Lock-in recipient's designated hospital" means the hospital designated to provide nonemergency care for a lock-in recipient pursuant to 907 KAR 1:677.

(9) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

(10)[~~(5)~~] "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

(11) "Recipient" is defined by KRS 205.8451(9).

Section 2. In-State Outpatient Hospital Service Reimbursement. (1)(a) Except for critical access hospital services, [~~and~~] outpatient hospital laboratory services, and a service referenced in subsection (6) of this section, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.

(b) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.

(2) Except as established in subsection (6) of this section, a facility specific outpatient cost-to-charge ratio paid during the course of a hospital's fiscal year shall be designed to result in reimbursement, at the hospital's fiscal year end, equaling ninety-five (95) percent of a facility's total outpatient costs incurred during the hospital's fiscal year.

(3) Except as established in subsections (4) and (6) of this section:

(a) Upon reviewing an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to ninety-five (95) percent of the facility's total outpatient costs, excluding laboratory services, incurred in the corresponding fiscal year; and

(b) Upon receiving and reviewing an in-state outpatient hospital's finalized cost report for the hospital's fiscal year, the department shall settle final reimbursement, excluding laboratory services, to the facility equal to ninety-five (95) percent of the facility's total outpatient costs incurred in the corresponding fiscal year.

(4)(a) The department's total reimbursement for outpatient hospital services shall not exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reimbursing for outpatient hospital services at ninety-five (95) percent of costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce the final outpatient hospital service reimbursement for each hospital to equal a percent of costs which shall result in the total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

(5) In accordance with 42 U.S.C. 1396r-8(a)(7), a hospital shall include the corresponding healthcare common procedure coding (HCPC) code if billing a revenue code of 250 through 261 or 634 through 636 for an outpatient hospital service.

(6)(a) Except for a critical access hospital, the department shall reimburse a flat rate of twenty-five (25) dollars for a screening of a lock-in recipient to determine if an emergency medical condition exists.

(b) A hospital shall use revenue code 451 to bill for a service referenced in paragraph (a) of this subsection.

(c) A service or reimbursement for a service referenced in subsection (a) of this section, shall not be included:

1. With a hospital's costs for reimbursement purposes; and

2. In any cost settlement between the department and hospital.

(7) In accordance with 907 KAR 1:014:

(a) Except for a service referenced in subsection (6) of this section, the department shall not reimburse for a nonemergency service provided to a lock-in recipient if provided by a hospital other than the lock-in recipient's designated hospital; or

(b) The department shall not reimburse for a nonemergency service provided to a lock-in recipient in an emergency department of a hospital.

Section 3. Out-of-State Outpatient Hospital Service Reim-

bursement. Excluding services provided in a critical access hospital and laboratory services, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be ninety-five (95) percent of the average in-state outpatient hospital cost-to-charge ratio.

Section 4. Critical Access Hospital Outpatient Service Reimbursement. (1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).

(2) A critical access hospital shall comply with the cost reporting requirements established in Section 6 of this administrative regulation.

Section 5. Outpatient Hospital Laboratory Service Reimbursement. (1) The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:

(a) At the Medicare-established technical component rate for the service in accordance with 907 KAR 1:029 if a Medicare-established component rate exists for the service; or

(b) By multiplying the facility's current outpatient cost-to-charge ratio by its billed laboratory charges if no Medicare rate exists for the service.

(2) Laboratory service reimbursement, in accordance with subsection (1) of this section, shall be:

(a) Final; and

(b) Not settled to cost.

(3) An outpatient laboratory hospital laboratory service shall be reimbursed in accordance with this section regardless of whether the service is performed in an emergency room setting or in a non-emergency room setting.

Section 6. Cost Reporting Requirements. (1) An in-state outpatient hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1, the Supplemental Medicaid Schedule KMAP-4 and the Supplemental Medicaid Schedule KMAP-6:

(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 provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare it shall simultaneously submit a copy of the cost report to the department.

2. If a catastrophic circumstance exists, as determined by the department (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) If a cost report indicates payment is due by a hospital to the department, the hospital shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due by the hospital to the department and the hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)(a) If it is determined that an additional payment is due by a hospital after a final determination of cost has been made by the department, the additional payment shall be due by a hospital to the department within sixty (60) days after notification.

(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 7. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision[~~shall be effective contingent upon the department's receipt of federal financial participation for the respective provision~~].

Section 8. Appeals. A hospital may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Worksheet E-3, Part III, Page 12, May 2004 edition";

(b) "Supplemental Medicaid Schedule KMAP-1", May 2004 edition;

(c) "Supplemental Medicaid Schedule KMAP-4", May 2004 edition; and

(d) "Supplemental Medicaid Schedule KMAP-6", 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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANIE MILLER, Secretary
APPROVED BY AGENCY: July 1, 2010
FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Jill Hunter, Darlene Burgess, or Stuart Owen

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

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

(a) How the amendment will change this existing administrative regulation: DMS is amending reimbursement by reimbursing a flat rate of $25 for a screening of a lock-in recipient to determine if the recipient has an emergency medical condition; by not reimbursing for a nonemergency service provided to a lock-in recipient in an emergency department of a hospital; and by not reimbursing for a nonemergency service (other than a screening to determine if an emergency medical condition exists) provided to a lock-in recipient if the hospital is not the lock-in recipient's designated hospital.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to control excessive Medicaid utilization and to ensure the availability of funding necessary for the continued operation of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(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 hospitals providing outpatient services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In-state Hospitals will have to use revenue code 451 to bill for screenings for lock-in recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no costs on regulated entities other than administrative costs associated with altering their billing practice for screenings for lock-in recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outpatient hospitals as a whole may benefit in that Medicaid funds that have been expended due to excessive utilization with lock-in recipients will be reduced; thus, preserving Medicaid funds for appropriate utilization and reimbursement.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates minimal administrative costs associated with Medicaid Management Information System (MMIS) programming to implement the amendment initially. DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

(b) On a continuing basis: DMS anticipates reducing expenditures by approximately DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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 amendment, including the amendment after comments, does not establish any fees, nor does it directly or indirectly increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment, including the amendment after comments, does not establish or increase any fees.

(9) Tiering: Is tiering applied? Critical access outpatient hospital reimbursement differs from other outpatient hospital reimbursement as critical access hospital reimbursement is established in federal regulation. The rate for screening is applied to lock-in recipients only as they are recipients that have been identified as excessively or in appropriately utilizing Medicaid services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient hospital services including the county and state owned are affected by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520, 194A.030, 194A.050, 205.560, 205.6310, 205.8453, 42 U.S.C. 1396a(30), 42 C.F.R. 440.20, and 447.321.

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 amendment is not expected to generate additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates initial, minimal administrative cost associated with programming its Medicaid Management Information System (MMIS) to conform to the amendment. DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no future costs associated with the amendment. DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

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. The amendment is not mandated, but 42 C.F.R. 440.20 and 447.321 address outpatient hospital reimbursement. 42 C.F.R. 400.203 establishes a provision regarding procedure coding.

2. State compliance standards. KRS 205.8453 charges Cabinet for Health and Family Services and the Department for Medicaid Services to institute “other measures necessary or useful in controlling fraud and abuse.” KRS 205.560 addresses Medicaid reimbursement. KRS 205.637 addresses Medicaid reimbursement to county-owned and operated hospitals. KRS 205.6310 states: “The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following: criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists; reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency; reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists; except for emergency room services rendered to children under the age of six (6), prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the

criteria established for a medical emergency; and the provisions of this section shall apply to any managed care program for Medicaid recipients."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(30)(A) requires a state to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." Additionally, 42 C.F.R. 447.321 establishes the upper payment limit for outpatient hospital reimbursement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter than federal requirements.

STATEMENT OF EMERGENCY
907 KAR 1:019E

This emergency administrative regulation is being promulgated to implement efficiencies in the Kentucky Medicaid pharmacy program as mandated by Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program and to comply with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(Emergency Amendment)

907 KAR 1:019E. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8[~~, Pub.L. 109-91~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the G.A.

EFFECTIVE: July 1, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5632, [~~and~~] Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564, tamper-resistant prescription requirements pursuant to 42 U.S.C. 1396b(i), and combats prescription fraud and abuse pursuant to KRS 205.8453.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

(4) "Covered outpatient drug" is defined by 42 U.S.C. 1396r-8(k)(2).

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

(6)[~~(5)~~] "Department's pharmacy Internet Web site" or "Web site" means the Internet Web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms/Pharmacy.htm [~~http://www.chfs.ky.gov/dms~~].

(7)[~~(6)~~] "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(8)[~~(7)~~] "Drug list" means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, drug categories, or related items and dispensing and prescribing information.

(9)[~~(8)~~] "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(10)[~~(9)~~] "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically- meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(11) "Emergency supply" means a seventy-two (72) hour supply.

(12) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13)[~~(10)~~] "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(14)[~~(11)~~] "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(15)[~~(12)~~] "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(16)[~~(13)~~] "Manufacturer" is defined in 42 U.S.C. 1396r-8(k)(5).

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

(18)[~~(15)~~] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(19)[~~(16)~~] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(20)[~~(17)~~] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(21)[~~(18)~~] "Prescriber" means a health care professional who:

(a)[~~,~~] within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(22)[~~(19)~~] "Recipient" is defined by KRS 205.8451(9).

(23)[~~(20)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(24)[~~(21)~~] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A covered outpatient drug, nonoutpatient drug, or diabetic supply covered via this administrative regulation[~~drug covered through the Outpatient Pharmacy Program~~] shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) A covered outpatient drug covered via this administrative regulation shall be prescribed on a tamper-resistant pad unless exempt pursuant to subsection (3) of this section.

(3) The tamper-resistant pad requirement established in subsection (2) of this section shall not apply to:

(a) An electronic prescription;

(b) A faxed prescription; or

(c) A prescription telephoned by a prescriber.

(4) To qualify as a tamper-resistant pad prescription, a prescription shall contain:

(a) One (1) or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One (1) or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One (1) or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(5) The department shall cover the following diabetic supplies via the outpatient pharmacy program in accordance with this administrative regulation and not via the department's durable medical equipment program:

(a) A syringe with needle (sterile, 1cc or less);

(b) Urine test or reagent strips or tablets;

(c) Blood ketone test or reagent strip;

(d) Blood glucose test or reagent strips for home blood glucose monitor;

(e) Normal, low, or high calibrator solution, chips;

(f) Spring-powered device for lancet;

(g) Lancets per box of 100; or

(h) Home blood glucose monitor.

(6) The department shall have a drug list which:

(a) Lists:

1. Drugs, drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) [~~Specifies covered vaccines;~~

~~(g)~~] May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(g)[~~(h)~~] May be updated monthly or more frequently by the department; and

(h)[~~(i)~~] Shall be posted on the department's Internet pharmacy Web site.

(6)(a)[~~(3)~~] The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from the requirement established in paragraph (a) of this subsection.[~~this requirement~~] based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. [~~A drug if used to promote smoking cessation;~~

~~6.~~] Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

6.[~~7.~~] An over-the-counter drug provided to a Medicaid nursing facility service recipient. An over-the-counter drug provided to a Medicaid nursing facility service recipient shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;

7.[~~8.~~] A barbiturate;

8.[~~9.~~] A benzodiazepine;

9.[~~10.~~] A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

10.[~~11.~~] A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the United States Food and Drug Administration;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with subsection (7) of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

(b) Except as prohibited in subsection (4), of this section, non-

controlled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) The prescription fill is for an outpatient service recipient, excluding an individual who is receiving supports for community living services in accordance with 907 KAR 1:145.

(4) A prescription fill for a maintenance drug for an outpatient service recipient who has demonstrated stability on the given maintenance drug, excluding an individual receiving supports for community living services in accordance with 907 KAR 1:145, shall be dispensed in a ninety-two (92) day supply unless:

(a) The department determines that it is in the best interest of the recipient to dispense a smaller supply; or

(b) The recipient is covered under the Medicare Part D benefit in which case the department shall not cover the prescription fill.

(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the compounded drug or compounded drug category.

(6) A prescriber shall make his or her national provider identifier (NPI) available to a pharmacist, and the prescriber's NPI shall be recorded on a pharmacy claim.

(7)(a)[~~An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:~~

~~(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;~~

~~(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;~~

~~(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or~~

~~(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.~~

~~(7) If it is determined by the department to be in the best interest of a recipient, the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.~~

~~(8) A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non emergency pharmacy services from the pharmacy to which the recipient has been restricted.~~

~~(9)(a)~~] Except as provided in paragraph (b), (c), or (d) of this subsection, the department shall cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions per recipient per month.

(b) The four (4) prescription limit shall not apply if the recipient:

1. Is under nineteen (19) years of age;

2. Uses insulin for the management of diabetes; or

3. Is a nursing facility resident who does not have Medicare Part D drug coverage.

(c) A pharmacist may utilize a four (4) prescription limit override code for a recipient whose prescription will exceed the four (4) prescription limit if the prescription is prescribed:

1. For any of the following conditions:

a. Acute infection or infestation;

b. Bipolar disorder;

c. Cancer;

d. Cardiac rhythm disorder;

e. Chronic pain;

f. Coronary artery or cerebrovascular disease (advanced arthrosclerotic disease);

g. Cystic fibrosis;

h. Dementia;

i. Diabetes;

j. End stage lung disease;

k. End stage renal disease;

l. Epilepsy;

m. Hemophilia;

n. HIV or AIDS or immunocompromised;

o. Hyperlipidemia;

p. Hypertension;

q. Major depression;

r. Metabolic syndrome;

s. Organ transplant; or

t. Psychotic disorder[~~;~~

~~u. Schizophrenic disorder; or~~

~~v. Schizotypal personality disorder~~]; or

2. As part of:

a. Acute therapy for migraine headache or acute pain; or

b. Suppressive therapy for thyroid cancer.

(d) An additional prescription or prescriptions may be covered if the department determines that it is in the best interest of the recipient to cover an additional prescription or prescriptions whether brand name or generic.

(8)[~~(10) Until close of business February 28, 2006, but no later than that date, the department shall cover unlimited generic prescriptions per member per month in accordance with the requirements and limitations established in this administrative regulation.~~

~~(11)~~] The department shall cover up to three (3) brand name prescriptions per member per month unless the department determines that it is in the best interest of the member to cover any additional brand name prescriptions.

(9)[~~(12)~~] A refill of a prescription shall not be covered unless at least ninety (90)[~~eighty (80)~~] percent of the prescription time period has elapsed.

Section 4. Prior Authorization Process. (1)(a) To request prior authorization for a drug:

1. The applicable form shall be completed and submitted to the department:

a. By fax, mail, express delivery service, or messenger service to the department; or

b. Via the department's pharmacy Internet Web site; or

2. A requester may provide the information required on the applicable form to the department verbally via the telephone number published on the department's pharmacy Internet Web site.

(b)[~~, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, via the Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents, by mail, express-delivery service, or messenger service to the department.~~] If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of a[~~the~~] recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number or submitted to the department via the department's pharmacy Internet Web site.

(2) A Drug Prior Authorization Request Form:

(a) Shall be used by a prescriber or pharmacist to request prior authorization for a drug except for a PPI/H2 blocker, a brand name drug, or an atypical antipsychotic agent;

(b) Shall be used by a pharmacist to request an early refill of a prescription; or

(c) May be used by a pharmacist[~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents. A request shall be submitted in accordance with the following:~~

~~(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist~~] to obtain prior authorization for special dispensing requests involving exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(3)(a) A Brand Name Drug Request Form, except as established in paragraph (c) of this subsection, shall be used by a prescriber to request prior authorization for a brand name drug if a generic form of the drug is available.

(b) Regarding a Brand Name Drug Request Form, a prescriber shall:

1. Complete the form;

2. Include on the form:

a. The handwritten phrase "band medically necessary" or "brand necessary"; and

b. The provider's signature for each specific drug requested; and

3. Indicate:

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) Submission of a Brand Name Drug Request Form shall not be required if:

1. The department has specifically exempted the drug, via the drug list, from this requirement; or

2.a. It has been determined by the department to be in the best interest of a recipient not to require submission of a Brand Name Drug Request Form; or

b. The prescriber certifies that the brand name drug is medically necessary in accordance with subsection (9) of this section.

(d) In addition to the requirements established in paragraphs (a) through (c) of this subsection, the prescriber certify a brand name only request by including for each brand name drug requested, the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

1. The prescription;

2. The nursing facility order sheet; or

3. A separate sheet of paper that includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) A Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents shall be:

(a) Used to request prior authorization for an atypical antipsychotic drug; and

(b) Completed and submitted as directed on the form.

(5) A Suboxone® and Subutex® Prior Authorization Request Form shall be:

(a) Used to request prior authorization for Suboxone® or Subutex®; and

(b) Completed and submitted as directed on the form.

(6) A Zyvox® (linezolid) Drug Authorization Request Form shall be:

(a) Used to request prior authorization for Zyvox®; and

(b) Completed and submitted as directed on the form.

(7) A Synagis® Prior Authorization Request Form shall be:

(a) Used to request prior authorization for Synagis®; and

(b) Completed and submitted as directed on the form.

(8)[~~(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:~~

~~1. Complete a Brand Name Drug Request Form;~~

~~2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and~~

~~3. Indicate on the Brand Name Drug Request Form:~~

~~a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and~~

~~b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.~~

~~(c) A Brand Name Drug Request Form shall not be required if:~~

~~1. It has been determined by the department to be in the best interest of a recipient not to require completion of a Brand Name Drug Request Form; and~~

~~2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.~~

~~(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:~~

~~1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;~~

~~2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and~~

~~3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.~~

~~(2)~~] If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with [~~subsection (1) of~~] this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:

a. Request that the prescriber obtain prior authorization from the department; or

b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with [~~subsection (1) of~~] this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and

b. Exist if, based on the clinical judgment[~~judgement~~] of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with [~~subsection (1) of~~] this section:

a. Submit a prior authorization request to the department's urgent fax number or to the department via the department's pharmacy Internet Web site[~~Web-based application located at the Web~~

~~site of http://kentucky.fhsc.com/providers/documents.asp~~]; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) or (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(9) If a prescriber submits a prescription to a pharmacy via telephone, the prescriber shall also fax the prescription to the pharmacy within forty-eight (48) hours of submitting it via telephone.

(10)[~~(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:~~

~~(a) The prescription;~~

~~(b) The nursing facility order sheet; or~~

~~(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.~~

~~(4)~~] The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax or via the department's pharmacy Internet Web site [~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp~~] to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(11)(a)[~~(5)~~] The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days.

(b) Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(12)[~~(6)~~] Prior authorization of drugs for a Medicaid long-term care recipient in a nursing facility shall be in accordance with the following:

(a) The department may specify in its drug list specific drugs or drug classes which shall:

1. Not be exempted from prior authorization; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.5632.

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug, which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c)1. Within thirty (30) days of the date the committee's recommendation is posted on the department's pharmacy Internet Web site, the secretary, in consultation with the commissioner and the department's pharmacy staff[~~director~~], shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization.

2. If the recommendation of the committee is not accepted, the secretary shall inform the committee of[~~present~~] the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) The person gives notice to the department (and gives a copy to the DMRAB chairperson) by fax or email at least five (5) business days[~~Written notice has been given to the chairperson at least twenty-four (24) hours~~] prior to the meeting.

(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed five (5) minutes; or

(b) By an individual on a subject shall not exceed five (5) minutes[~~The DMRAB may establish time limits for presentations~~].

(3) The proposed agenda shall be posted on the department's pharmacy Internet Web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

(a)1. A verbal presentation in aggregate per drug per drug manufacturer shall not exceed five (5) minutes;

2. A verbal presentation by an individual on a subject shall not exceed five (5) minutes[~~The time limit for a verbal presentation shall not exceed five (5) minutes in aggregate per drug per manufacturer or five (5) minutes by an individual speaking on a particular position~~];

3.[~~2.~~] A request to make a verbal presentation shall be submitted in writing via fax or e-mail to the department with a copy to the chair of the P&T Committee no later than five (5) business days[~~forty-eight (48) hours~~] in advance of the P&T Committee meeting;

4.[~~3.~~] An individual may only present new information (package insert changes, new indication or peer-reviewed journal articles) on a product or information on a new product; and

5.[~~4.~~] A presentation shall be limited to an agenda item; or

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1.a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pdf format); or

b. Mailed to the department with a total of twenty-five (25)[~~eighteen (18)~~] copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205.564(8).

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer's name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and

(f) Name of a contact person. [~~(8) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.~~

~~(9) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.~~]

Section 8. Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's pharmacy Internet Web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:

(a) Be in writing;

(b) Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;

(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's pharmacy Internet Web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 9. Confirming Receipt of Prescription. (1) A recipient, or a designee of the recipient, shall sign their name on a log at a pharmacy confirming that the recipient received the prescription.

(2) A pharmacist shall maintain, or be able to produce a copy of, a log of recipient signatures referenced in subsection (1) of this section, for at least six (6) years.

Section 10. Exemptions to Prescriber Requirements. The department shall reimburse for:

(1) A full prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for a full prescription is in the best interest of the recipient; or

(2) An emergency supply of a prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for the emergency supply is in the best interest of the recipient.

Section 11. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 12. Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug or decision regarding the amount of a drug dispensed based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 13.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Drug Prior Authorization Request Form", May 15, 2007 edition;

(b) "Brand Name Drug Request Form", May 15, 2007 edition;

(c) "Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents", May 15, 2007 edition;

(d) "Subaxone® and Subutex® Prior Authorization Request Form", September 22, 2009 edition;

(e) "Zyvox® (linezolid) Drug Authorization Request Form", January 11, 2010 edition; and

(f) "Synagis® Prior Authorization Request Form", September 16, 2009 edition. [~~"MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, edition"; and~~

~~(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, edition"; and~~

~~(c) "MAP-012802 PPI and H2 Blocker Request Form, October~~

~~18, 2004, edition".~~]

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee Barnard, Trista Chapman, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements various Medicaid pharmacy program efficiencies as mandated by Part I, G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. The amended regulation requires prescribers to be Kentucky Medicaid Program providers; increases the period before a prescription can be refilled from after 80 percent of the prescription period has lapsed to 90 percent; reimburses for diabetic supplies via the pharmacy program rather than the durable medical equipment program in order to procure rebates for the items; updates forms used for prior authorization purposes; establishes that a recipient must sign a log at the pharmacy to confirm receipt of a prescription and requires that requests to present at a Drug Management Review Advisory Board (DMRAB) or Pharmacy and Therapeutics (P& T) Committee meeting must be submitted at least five (5) business days in advance. Additionally, the amendment complies with 42 U.S.C. 1396b(i), which contains a provision requiring Medicaid-reimbursed providers to use tamper-resistant prescription drug pads in their prescribing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing pharmacy program efficiencies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing Medicaid pharmacy program efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing Medicaid pharmacy program efficiencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid-reimbursed prescribing providers are affected by this amendment and recipients are affected as well.

(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: Regulated entities will be required to use tamper-resistant prescription drug pads in their prescribing and non-Medicaid providers will have to enroll in Kentucky's Medicaid program in order to prescribe controlled substances for Kentucky Medicaid recipients. Medicaid recipients will have to sign, at the pharmacy, confirming their receipt of prescriptions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Medicaid-reimbursed prescribing providers may experience costs associated with purchasing tamper-resistant prescription drug pads.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers who comply will receive reimbursement for Medicaid recipient prescriptions and recipients will receive prescriptions.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(b) On a continuing basis: DMS estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(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 Title XIX of the Social Security Act and state matching funds of general fund appropriations.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396b(i)(23).

2. State compliance standards. KRS 205.560 establishes "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Prescriptions, if not executed electronically, must be executed on a tamper resistant pad.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal law or regulation does not require a prescriber to be a provider enrolled in the given state's Medicaid program, but DMS is implementing this requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. DMS is im-

plementing the requirement that a prescriber be an enrolled Medicaid program provider in order to prevent recipient from doctor shopping in order to procure additional drugs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all Medicaid-reimbursed prescribing providers as well as non-Medicaid providers who are accustomed to prescribing controlled substances for Medicaid recipients.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA, KRS 194A.010(1), 194A.030(2), 205.520(3), 205.560(1), 205.8453, 42 U.S.C. 1396b(i)(23) and 1396r-8.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to implement this amendment during the first year. The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment during subsequent years. The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 1:479E

This emergency administrative regulation is being promulgated to implement a pharmacy efficiency in the Kentucky Medicaid program as mandated by Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. By this administrative regulation, the Department for Medicaid Services will reimburse for diabetic supplies via the Medicaid pharmacy program (in order to procure rebates) rather than continuing to reimburse for them via the durable medical equipment program. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program and to comply with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

907 KAR 1:479E. Durable medical equipment covered benefits and reimbursement.

RELATES TO: KRS 205.520, 42 C.F.R. 424.57, 440.230, 441 Subpart B, 45 C.F.R. 162.1002, 42 U.S.C. 1396d(r), 1395mm(20)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d, Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA.

EFFECTIVE: July 1, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) "Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:

(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;

(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;

(c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) days prior to discharge from a hospital or nursing facility if:

1. The item was provided for purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. No billing is done prior to the date of the recipient's discharge from the facility.

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

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(8) "Durable medical equipment" or "DME" means medical equipment which:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home.

(9) "Family choices" means 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.

(10) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(11) "Home" means a place where the recipient resides excluding:

(a) A nursing facility;

(b) A hospital;

(c) An intermediate care facility for individuals with mental retardation or a developmental disability; or

(d) An institution for individuals with a mental disease as defined in 42 U.S.C. 1396d(i).

(12) "Incidental" means that a medical procedure or service:

(a) Is performed at the same time as a more complex primary procedure or service; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure or service.

(13) "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(14) "Medicaid DME Program Fee Schedule" means a list, located at http://chfs.ky.gov/dms, containing the current Medicaid maximum allowable amount established by the department for a covered item of durable medical equipment, a prosthetic, an orthotic, or a medical supply.

(15) "Medical supply" means an item that is:

(a) Consumable;

(b) Nonreusable;

(c) Disposable; and

(d) Primarily and customarily used to serve a medical purpose.

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

(17) "Medicare accreditation" means having met the quality standards established in 42 U.S.C. 1395mm(20).

(18) "Mutually exclusive" means that two (2) DMEPOS items:

(a) Are not reasonably provided in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent duplicate or very similar items; or

(c) Represent medically inappropriate use of HCPCS codes.

(19)[~~(18)~~] "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(20)[~~(19)~~] "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(21)[~~(20)~~] "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner, physician's assistant, or chiropractor[~~or physician's assistant~~] who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

(b) If an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically-necessary item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

(22)[~~(21)~~] "Prior authorization" means approval which a supplier shall obtain from the department before being reimbursed.

(23)[~~(22)~~] "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(24)[~~(23)~~] "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits which could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

(25)[~~(24)~~] "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(26)[~~(25)~~] "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)(a) Except as provided in subsection (2)(b) of this section, coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:

1. Be based on medical necessity and reasonableness;

2. Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

3. Require prior authorization in accordance with Section 7 of this administrative regulation;

4. Be provided in compliance with 42 C.F.R. 440.230(c); and

5. Be restricted to an item used primarily in the home.

(b) Coverage of prosthetic devices shall not exceed $1,500 per twelve (12) month period per member of the family choices benefit plan.

(2) Unless otherwise established in this administrative regulation;

(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1)(a) of this section that was in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1)(a) of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated by 45 C.F.R. 164.316.

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods.

(7) A CMN shall contain:

(a) The recipient's name and address;

(b) A complete description of the item or service ordered;

(c) The recipient's diagnosis;

(d) The expected start date of the order;

(e) The length of the recipient's need for the item;

(f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number, and

National Provider Identifier (NPI)[~~Unique Provider Identification Number (UPIN)~~], if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

(17) A supplier shall not ship supplies to a recipient unless the supplier has:

(a) First had direct contact with the recipient or the recipient's caregiver; and

(b) Verified:

1. That the recipient wishes to receive the shipment of supplies;

2. The quantity of supplies in the shipment; and

3. Whether or not there has been a change in the use of the supply.

(18) A verification referenced in subsection (17) of this section for each recipient shall be documented in a file regarding the recipient.

(19) If a supplier ships more than one (1) month supply of an item, the supplier shall assume the financial risk of nonpayment if the recipient's Medicaid eligibility lapses or a HCPCS code is discontinued.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) The following items shall be covered for purchase only:

(a) A cane;

(b) Crutches;

(c) A standard walker;

(d) A prone or supine stander;

(e) A noninvasive electric osteogenesis stimulator; or

(f) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.

(2) The following items shall be covered for rental only:

(a) An apnea monitor;

(b) A respiratory assist device having bivalve pressure capability with backup rate feature;

(c) A ventilator;

(d) A negative pressure wound therapy electric pump;

(e) An electric breast pump;

(f) The following oxygen systems:

1. Oxygen concentrator;

2. Stationary compressed gas oxygen;

3. Portable gaseous oxygen;

4. Portable liquid oxygen; or

5. Stationary liquid oxygen; or

(g) Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) or (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(4)(a) A MAP-1001 form shall be completed if a recipient requests an item or service not covered by the department.

(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:

1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;

2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;

3. The DME supplier shall complete the supplier information on the MAP 1001;

4. The DME supplier shall provide a copy of the completed MAP 1001 to the recipient; and

5. The DME supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized DME item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding.

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If no warranty is in effect on the requested repair; and

(d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.

(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of DME that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; [~~or~~]

(h) An item determined not medically necessary, clinically appropriate or reasonable by the department; or

(i) Diabetic supplies, as indicated on the Medicaid DME Program Fee Schedule, shall:

a. Be covered via the Medicaid outpatient pharmacy program; and

b. Not be covered via the Medicaid durable medical equipment program.

(2) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(3) Durable medical equipment, prosthetics, orthotics and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

(a) An item or repair billed to the department at $500[~~$300~~] or more;

(b) Rental of equipment as indicated on the Medicaid DME Program Fee Schedule excluding oxygen services after twelve (12) continuous months of service;

(c) [~~A therapeutic shoe or boot;~~

~~(d)~~] Orthopedic shoes;

(d)[~~(e)~~] An adjustment to a prosthetic or orthotic;

(e)[~~(f)~~] An augmentative communication device;

(f)[~~(g)~~] A customized DME item;

(g)[~~(h)~~] A replacement DME item, prosthetic, or orthotic if replacement is prior to the:

1. Usual and customary lifetime of the item; or

2. Limitation set by the department as indicated the Medicaid DME Program Fee Schedule;

(h)[~~;~~

~~(i)~~] A nutritional supplement;

(i)[~~(j)~~] An amino acid modified preparation or a low-protein modified food product;

(j)[~~(k)~~] A loaner item for a member-owned piece of equipment that is being repaired;

(k)[~~(l)~~] A DMEPOS item denoted by a general or nonspecific HCPCS code;

(l)[~~(m)~~] An item designated on the Medicaid DME Program Fee Schedule as requiring prior authorization;

(m)[~~(n)~~] An item which exceeds the quantity limitation set in the Medicaid DME Program Fee Schedule; or

(n)[~~(o)~~] An item designated by a HCPCS code not indicated on the Medicaid DME Program Fee Schedule that is determined by the department to be a covered benefit.

(2) If an item requires prior authorization, a supplier shall comply with the following:

(a) Submit all required documentation prior to or within one (1) year from the date of service;

(b) Submit a written request to the department for prior authorization which shall include the prescriber's order; [~~and~~]

(c) Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization; and

(d) If the required prior authorization submittals referenced in this subsection are not submitted within the established time frames, the prior authorization request shall be denied.

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

(4) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.

(7) A supplier shall request prior authorization by mailing, faxing, or electronically submitting[~~or faxing~~] the following information to the department:

(a) A completed prior authorization form MAP-9;

(b) A completed CMN; and

(c) If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.

(8) The following additional information shall be required for prior authorization of a customized item:

(a) An estimate of the fitting time;

(b) An estimate of the fabrication time;

(c) A description of the materials used in customizing the item; and

(d) An itemized estimate of the cost of the item, including the cost of labor.

(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:

(a) A description of the nature of the repair;

(b) An itemization of the parts required for the repair;

(c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(10) An item shall be prior authorized based on:

(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b)1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph does not exist or is unavailable.

(11) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity and:

(a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

(12)(a) Prior authorization by the department shall not:

1. Be a guarantee of recipient eligibility; or

2. Guarantee reimbursement.

(b) Eligibility verification shall be the responsibility of the supplier.

(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(15)(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid DME Program Fee Schedule; or

(c) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;

2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1161, E1220, E1229, E1231 through E1238, or K0009; or

3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015, E1028 through E1030, E2201 through E2204, E2300, E2301, E2310, E2311, E2321 through E2330, E2340 through E2343, E2373 through E2376, E2381 through E2392, E2394 through E2397[~~E2396, E2399~~], E2601 through E2621, K0108, K0669, K0734 through K0737, or L8499.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by a HCPCS code not currently on the Medicaid DME Program Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.

(b) The department shall post HCPCS code change information on its Web site accessible at http://chfs.ky.gov/dms. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) Reimbursement for the purchase of an item that is currently being rented shall be[~~:~~

~~(a)~~] for an item that has been rented for less than ten (10)[~~three (3)~~] months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; [~~or~~

~~(b) For an item that has been rented for three (3) months or more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.~~]

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid DME Program Fee Schedule; or

(b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

(7) Except for an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of ten (10)[~~twelve (12)~~] consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lessor of:

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

(b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;

(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number;

(2) Adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;

(3)(a) Provide proof of accreditation, by an approved Medicare accreditation entity, to the department every three (3) years unless exempt from accreditation by CMS;

(b) If exempt from accreditation by CMS, provide a letter to the department on company letterhead that indicates the CMS exemption status;

(4)[~~and adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;~~

~~(2)~~] Be enrolled in the Kentucky Medicaid Program in accordance with:

(a) 907 KAR 1:671; and

(b) 907 KAR 1:672;

(5)[~~(3)~~] Comply with the requirements regarding the confiden-

tiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

(6)[~~(4)~~] Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider so informed the recipient of noncoverage prior to providing the service.

Section 10. Appeal Rights. (1) If an individual is not prior authorized for DMEPOS based upon an application of this administrative regulation, the department shall:

(a) Conduct a reconsideration review within thirty (30) days from the receipt of the request;

(b) Base the reconsideration review decision solely upon information that is:

1. Contained in the individual's medical records; and

2. Submitted with the written request pursuant to this subsection; and

(c) Issue a notification of approval or denial within five (5) working days of a reconsideration review.

(2) If an outcome of a services reconsideration review results in a denial, the department shall grant an appeal in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(4)[~~(2)~~] An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(5)[~~(3)~~] An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

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

(a) "Form MAP-9, Prior Authorization Form", July 2010[~~February 2005~~] edition, Department for Medicaid Services;

(b) "Form MAP-1000, Certificate of Medical Necessity", July 2010[~~February 2005~~] edition, Department for Medicaid Services;

(c) "Form MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods", July 2010[~~February 2005~~] edition, Department for Medicaid Services;

(d) "Medicaid DME Program Fee Schedule", July 2010[~~January 2008~~] edition; and

(e) "Form MAP 1001, Advance Member Notice", September 2006 edition.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patricia Biggs or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(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 provisions related to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(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: Among the amendments are: establishing that diabetic supplies will be reimbursed via the Medicaid pharmacy program rather than the durable medical equipment program; raising the prior authorization threshold for items from $300 to $500; reducing the time frame for when an item converts from a rental to a purchase (12 - 10 months); defining Medicare accreditation and requiring suppliers to document Medicare accreditation to DMS; establishing a reconsideration review option of a prior authorization denial and authorizing chiropractors to prescribe as the Centers for Medicare and Medicaid Services (CMS) permits this.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with the "budget bill" (specifically Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA) mandate to implement Medicaid pharmacy efficiencies. Moving diabetic supplies to the pharmacy program will enable the Department for Medicaid Services (DMS) to procure rebates on the supplies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by moving diabetic supply reimbursement from the durable medical equipment program to the Medicaid pharmacy program as a pharmacy efficiency implemented in accordance with Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. Additionally, it amends Medicaid durable medical equipment policy as authorized by KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1) and 42 U.S.C. 1396a, b, and d.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: amendment conforms to the content of the authorizing statutes by moving diabetic supply reimbursement from the durable medical equipment program to the Medicaid pharmacy program as a pharmacy efficiency implemented in accordance with Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. Additionally, it amends Medicaid durable medical equipment policy as authorized by KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1) and 42 U.S.C. 1396a, b, and d.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: DMS estimates that 2,896 DME providers are enrolled in the Medicaid program. Currently, there are approximately 807,000 enrolled Medicaid recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. DME providers will have to provide Medicare accreditation documentation to DMS every 3 years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated entities should benefit from policy clarifications and a reduced administrative burden.

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

(a) Initially: DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500

will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

(b) On a continuing basis: DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) is the only government entity affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA, 42 C.F.R. 424.57 and 45 C.F.R. 162.1002 and 164.316.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional cost. DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost. DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

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

Revenues (+/-):

Expenditures (+/-):

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

STATEMENT OF EMERGENCY
907 KAR 1:677E

This emergency administrative regulation is being promulgated to implement utilization control in the Medicaid lock-in program including pharmacy efficiencies as mandated by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly and in accordance with KRS 205.8453 and KRS 205.6310. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program and to comply with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(Emergency Amendment)

907 KAR 1:677E. Medicaid recipient lock-in program.

RELATES TO: KRS 205.8453, 21 C.F.R. 1308.12, 1308.13, 1308.14, 42 C.F.R. 431.54, 433.111(b), 42 U.S.C. 1396(a), 1396 (a)(2)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6318, 205.6310, 205.8453, 42 C.F.R. 431.54, Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly[~~, EO 2004-726~~]

EFFECTIVE: July 1, 2010

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) 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. KRS 205.8453(4) and 205.6318(6) direct the cabinet to promulgate administrative regulations to identify misutilization of Medicaid services, to institute other measures necessary or useful in controlling fraud and abuse. This administrative regulation establishes[~~sets forth~~] the Medicaid lock-in provisions relating to recipient overutilization of the Medicaid Services [~~Program~~].

Section 1. Definitions. "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Cabinet" is defined by KRS 205.010(1).

(3) "Controlled substance" means a drug or substance identified in 21 C.F.R. 1308.12, 1308.13, or 1308.14.

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

(5) "Emergency medical condition" is:

(a) Defined by 42 U.S.C. 1395dd(e); and

(b) Identified in the department's Table of Lock-In Emergency Medical Conditions.

(6) "Emergency service" means a service:

(a) Defined by 42 C.F.R. 447.53; and

(b) For a condition listed in the Table of Lock-in Emergency Medical Conditions.

(7) "Fraud" is defined by KRS 205.8451(2).

(8) "Lock-in program" means a department program which restricts a recipient to receiving Medicaid services from a designated provider.

(9) "Lock-in recipient" means a recipient enrolled in the lock-in program.

(10) "Medicaid Management Information System" means the department's mechanized claims processing and information retrieval system as defined by, and in accordance with, 42 C.F.R. 433.111(b).

(11) "Nonemergency care" means a service for a nonemergency condition.

(12) "Overutilization" means the receipt of a treatment, drug, medical supply, or other Medicaid service from one (1) or more providers in an amount, duration, or scope that exceeds the amount that would reasonably be expected to result in a medical or health benefit to the recipient.

(13) "Physician" is defined by KRS 311.550(12).

(14) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(15) "Prescriber" means a physician who:

(a) Within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(16) "Primary care provider" means an advanced registered nurse practitioner, a physician, or physician assistant.

(17) "Provider" is defined by KRS 205.8451(7).

(18) "Provider abuse" is defined by KRS 205.8451(8).

(19) "Recipient" is defined by KRS 205.8451(9).

(20) "Recipient abuse" is defined by KRS 205.8451(10)

(21) "Utilization review" means a department review and analysis:

(a) Of Medicaid claims for a twelve (12) consecutive month period including:

1. A recipient's medical conditions; and

2. Medicaid services received by the recipient; and

(b) To determine if recipient overutilization has occurred.

Section 2. Review of Complaints. (1) A complaint relating to potential fraud, recipient abuse, provider abuse, or overutilization shall be reported to the department or Cabinet for Health and Family Services, Office of Inspector General via the Medicaid and Welfare Fraud and Abuse hotline at 1-800-372-2970.

(2) The department shall respond to a complaint referenced in subsection (1) of this section by conducting a utilization review of the recipient.

(3) A utilization review of a recipient referenced in subsection (2) of this section shall include a review of paid claims using data collected from the Medicaid Management Information System to identify if the recipient:

(a) Utilized Medicaid services at a frequency or amount which meets criteria established in Section 4 of this administrative regulation; and

(b)1. Shall be enrolled in the lock-in program to manage nonmedically necessary overutilization of Medicaid services by the recipient; or

2. Shall not be enrolled in the lock-in program if the recipient:

a. Resides in a long term care nursing facility;

b. Is under the age of eighteen (18) years;

c. Receives Medicare benefits; or

d. Overutilized Medicaid services necessarily to treat a complex health condition, as determined by the department's licensed pharmacist, physician, and registered nurse.

Section 3. General Exemption. If the department determines that not enrolling a recipient in the lock-in program is in the best interest of the recipient, the department shall not enroll the recipient in the lock-in program.

Section 4. Lock-in Criteria. Except as established in Section 2(3)(b)2 and Section 3 of this administrative regulation, the department shall initiate the lock-in process, as established in Section 5 of this administrative regulation, for a recipient if:

(1) At least two (2) of the following situations occurred in any two (2) ninety (90) calendar day periods within twelve (12) consecutive months:

(a) The recipient received services from at least eight (8) different providers, including a physician, advanced registered nurse practitioner, or physician assistant;

(b) The recipient received at least fifteen (15) prescription drugs;

(c) The recipient received prescriptions from at least eight (8) different prescribers;

(d) The recipient received the same services from at least two (2) different providers within the same day;

(e) The recipient had at least twelve (12) office visits;

(f) The recipient received services from at least three (3) different physicians, ARNPs, or PAs:

1. Of the same type or specialty; and

2. For the same or a similar diagnosis; or

(g) The recipient received at least four (4) prescriptions for different controlled substances as identified in the department's Lock-in Table Controlled Substances; or

(2) At least one (1) of the following conditions occurred in any two (2) ninety (90) calendar day periods within twelve (12) consecutive months:

(a) The recipient had at least four (4) hospital emergency department visits for a condition that was not an emergency medical condition;

(b) The recipient received services from at least three (3) different hospital emergency departments for a condition that was not an emergency medical condition;

(c) The recipient had prescriptions for the same drugs dispensed on the same or subsequent day at least twice;

(d) The recipient received drugs from at least three (3) different pharmacies;

(e) The recipient received at least twenty-four (24) prescriptions;

(f) The recipient received a prescription for a controlled substance, as identified the department's Lock-in Table of Controlled Substances from at least two (2) different prescribers;

(g) The recipient had duplicative or contraindicated utilization of:

1. Medications, medical supplies, or appliances dispensed by or prescribed by at least two (2) prescribers; or

2. Medical visits, procedures, or diagnostic tests from at least two (2) providers; or

(h) The recipient received at least twelve (12) prescriptions for a controlled substance as identified in the department's Lock-in Table of Controlled Substances.

(3) A recipient shall be locked in to one (1) designated hospital for nonemergency care, except for a screening to determine if an emergency medical condition exists pursuant to 907 KAR 1:014, if the recipient:

(a) Meets the lock-in utilization criteria pursuant to subsection (1) or (2) of this section; and

(b) Meets the criteria in subsection(2)(a)(b) of this section.

Section 5. Lock-in Process. Upon identification of a recipient

who shall be enrolled in the lock-in program in accordance with Section 2(3)(a)(b)1. of this administrative regulation, the department shall:

(1) Send a written notification to the recipient, which includes:

(a) A brief summary of the recipient's utilization review findings:

(b) The reason for enrolling the recipient in the lock-in program;

(c) A description of the lock-in program;

(d) The effective date of lock-in program enrollment;

(e) Identification of the recipient's designated providers as established in subsection (2)(a) of this section;

(f) Information relating to the recipient's right to a hearing as established in Section 9 of this administrative regulation; and

(g) Contact information of an individual who may be contacted in writing or by telephone for information relating to the lock-in program; and

(2) Except for a recipient who requests a hearing relating to a department lock-in determination, enroll the recipient in the lock-in program within thirty (30) days of sending the written notification referenced in subsection (1) of this section by:

(a) Restricting the lock-in recipient to receiving nonemergency care and services for conditions which are not emergency medical conditions from designated providers including:

1. One (1) primary care provider who:

a. Shall be accessible to the recipient within normal time and distance standards for the community in which the recipient resides;

b. If the lock-in recipient has a designated hospital in accordance with subparagraph 4 of this paragraph:

(i) Shall have inpatient admission privileges at the recipient's designated hospital, or;

(ii) If the primary care provider does not have admission privileges at the recipient's designated hospital, shall have an arrangement with a provider who does have inpatient admission privileges at the recipient's designated hospital;

c. Shall provide services and manage the lock-in recipient's necessary health care services;

d. If the lock-in recipient needs a Medicaid-covered service other than the service of the designated primary care provider, shall complete and forward a Lock-in Recipient Referral to a referred provider;

e. Shall participate in the recipient's periodic utilization review as identified in subsection (2)(c) of this section; and

f. If the designated primary care provider is a physician, may serve as the lock-in recipient's designated controlled substance prescriber;

2. One (1) controlled substance prescriber who shall serve as the sole prescriber and manager of controlled substances for the lock-in recipient; and

3. One (1) pharmacy; and

4. If the recipient meets the criteria established in Section 4(3) of this administrative regulation, one (1) hospital;

(b) Maintaining the restrictions identified in paragraph (a) of this subsection for at least twenty-four (24) months; and

(c) Following the initial twenty-four (24) month period of lock-in enrollment as established in paragraph (b) of this subsection, conducting a utilization review at twelve (12) month intervals to:

1. Measure the effectiveness of the recipient's enrollment in the lock-in program; and

2. Determine if the recipient shall:

a. Continue enrollment in the lock-in program if the recipient:

(i) Does not use a designated provider; or

(ii) Meets the criteria as established in Section 4 of this administrative regulation; or

b. Be disenrolled if the recipient:

(i) Uses a designated provider; and

(ii) Does not meet the criteria established in Section 4 of this administrative regulation; and

(d) Providing the lock-in recipient with a written notification of the findings of a utilization review as identified in paragraph (c) of this subsection, including:

1. A decision to maintain enrollment in or disenrollment from the lock-in program; and

2. Appeal rights in accordance with Section 9 of this administrative regulation.

Section 6. Designated Providers. A designated provider as identified in Section 5(2)(a) shall serve as a designated provider of a lock-in recipient for at least twenty-four (24) months except for the following situations:

(1) The designated provider:

(a) Submits to the department a written request for a release from serving as the recipient's designated provider; and

(b) Serves as the recipient's designated provider until a comparable designated provider may be selected;

(2) The recipient relocates outside of the designated provider's geographic area;

(3) In accordance with Section 8(3) of this administrative regulation, the recipient submits a written request to the department which:

(a) Requests a designated provider change; and

(b) Includes information to support cause or a necessary reason for the change, including the recipient:

1. Was denied access to a needed medical service;

2. Received poor quality of care; or

3. Does not have access to a provider qualified to treat the recipient's health care needs;

(4) The designated provider withdraws or is terminated from participation in the Medicaid Program; or

(5) The department determines that it is in the best interest of the lock-in recipient to change the designated provider.

Section 7. Fees, Payments, and Nonpayments. (1) On behalf of a lock-in recipient, the department shall pay:

(a) At the beginning of each month:

1. A fee of ten (10) dollars to a designated primary care provider for the management of a lock-in recipient's necessary health care; and

2. Except for a designated controlled substance prescriber who also serves as a lock-in recipient's designated primary care provider, a fee of five (5) dollars to a designated controlled substance prescriber; and

(b) For:

1. A medical screening examination performed in the emergency department of a hospital to determine if an emergency medical condition exists; and

2. An emergency service.

(2) In addition to the fee established in subsection (1)(a)1. of this section, the department shall pay for necessary services provided to the recipient by the recipient's designated primary care provider.

(3) Except for a service as established in subsection (1)(b) of this section, the department shall not pay for a service rendered by a provider other than the recipient's designated primary care provider unless the designated primary care provider:

(a) Refers the recipient to the referred provider for a necessary service; and

(b) Completes and forwards a copy of the Lock-in Recipient Referral to the referred provider of the service.

Section 8. Lock-in Recipient Requirements. A lock-in recipient:

(1) Shall be restricted to receiving necessary nonemergency health care services from a designated provider as identified in Section 5(2)(a) of this administrative regulation except for services rendered by a referred provider in accordance with Section 7(3) of this administrative regulation;

(2) Shall be responsible for the payment of a service rendered by a provider who:

(a) Is not the recipient's designated primary care provider;

(b) Does not have a Lock-in Recipient Referral from the recipient's designated primary care provider; and

(c) Informs the lock-in recipient that the recipient shall be responsible for the costs of the provider's services before the service is rendered; and

(3) May request a change of a designated provider in accordance with Section 6(3) of this administrative regulation:

(a) Within ninety (90) days of the date of the recipient notification letter as identified in Section 5(1) of this administrative regulation; or

(b) At least once in a twelve (12) month period following initial

enrollment in the lock-in program.

Section 9. Appeal Rights. A recipient who is notified of a department decision to enroll or maintain enrollment of the recipient in the lock-in program, shall have the right to request a hearing in accordance with 907 KAR 1:563,

Section 10. Fraud and Abuse Referral. If fraud, provider abuse, or recipient abuse is identified in the course of a department utilization review for lock-in purposes, the department shall comply with KRS 205.8453(3).

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

(a) The "Lock-in Table of Controlled Substances", April 2010 edition;

(b) The "Table of Lock-in Emergency Medical Conditions", April 2010 edition; and

(c) The "Lock-in Recipient Referral", June 2010 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, 6C-C, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~(1) "Department" means the Department for Medicaid Services and its designated agents.~~

~~(2) "Emergency services" means services for a medical condition for which a delay in treatment will likely result in the recipient's death, irreparable harm, immediate grave bodily harm, a life-threatening condition or permanent impairment of the recipient's health.~~

~~(3) "Fraud" means as defined in KRS 205.8451.~~

~~(4) "Immediate grave bodily harm" means the condition that would result from failure to provide emergency services for an emergency medical condition.~~

~~(5) "Irreparable harm" means a medical condition characterized by chronic illness or body impairment which may result from a failure to provide medical services on an immediate or emergency basis.~~

~~(6) "Life-threatening condition" means a medical condition which may result in the death of the individual unless medical services are provided on an immediate or emergency basis.~~

~~(7) "Lock-in" means as defined in 907 KAR 1:002.~~

~~(8) "Nonlife-threatening condition" means a medical condition which would not result in the death of the individual if medical services are not provided on an immediate or emergency basis.~~

~~(9) "Overutilization" means as defined in 907 KAR 1:002.~~

~~(10) "Provider" means as defined in KRS 205.8451.~~

~~(11) "Recipient abuse" means as defined in KRS 205.8451.~~

~~Section 2. Lock-in Program. (1) All complaints concerning possible recipient abuse or overutilization of Medicaid services by eligible recipients shall be referred to the department for investigation. A potential Medicaid Program abuser or overutilizer may be identified by:~~

~~(a) Caseworkers;~~

~~(b) Providers, including those that provide emergency services;~~

~~(c) The Attorney General's office;~~

~~(d) Hotline referrals;~~

~~(e) Surveillance and utilization review system reports showing utilization which exceeds a norm by at least a standard deviation; or~~

~~(f) Other staff or outside sources.~~

~~(2) If a recipient is identified as needing an overutilization review, an analysis shall be made of that recipient's utilization of Medicaid services. If the review reveals that an individual has utilization that may be warranted in view of the individual's medical diagnosis, complicating conditions and treatment regime, the review shall be closed.~~

~~(3) If the review reveals that an individual does not have a medical condition, complicating condition or treatment regime to warrant the individual's higher than normal utilization, a second level review and investigation shall be conducted to determine if the recipient has overutilized or abused the Medicaid Program.~~

~~(4) Recipient overutilization or abuse of the Medicaid Program may be:~~

~~(a) Intentional; or~~

~~(b) May result from a lack of knowledge by the recipient regarding the proper use of medical services.~~

~~(5) If overutilization or abuse is determined to be the result of a lack of recipient knowledge regarding proper use of medical services, a letter shall be sent to the recipient advising of:~~

~~(a) The dangers of inappropriate utilization of medical services; and~~

~~(b) The importance of having one (1) physician responsible for directing an individual's medical care.~~

~~(6) If the overutilization or abuse is determined to be intentional The department shall notify the recipient in writing of the pending lock-in action. The letter shall:~~

~~(a) Explain the right to a hearing regarding the proposed lock-in decision in accordance with Section 3 of this administrative regulation; and~~

~~(b) Inform recipient of the date their lock-in status shall be implemented, if a hearing is not requested.~~

~~(7) If a hearing is requested with regard to the proposed lock-in, action shall not be taken to lock the recipient in until a final hearing decision upholding the proposed lock-in action has been made.~~

~~(8) A recipient who has been identified as intentionally abusing or overutilizing the Medicaid Program based on an analysis of the recipient's medical history and utilization patterns shall be locked in to Medicaid providers including:~~

~~(a) A physician; and~~

~~(b) A pharmacy.~~

~~(9) The lock-in physician and pharmacy shall be selected by the department. The selected providers shall be accessible within normal time and distance standards for the community in which the recipient lives.~~

~~(10) A recipient identified as abusing or overutilizing the program shall be locked in for a minimum of twelve (12) months. After the lock-in period, periodic determinations to be performed every twelve (12) months or more frequently, as needed, shall be made to:~~

~~(a) Determine the effectiveness of the lock-in; and~~

~~(b) Determine whether the lock-in status shall continue for another twelve (12) month period.~~

~~(11) Lock-in physicians shall serve as case managers for referrals to all health facilities and services, except for emergency services. A case management fee of ten (10) dollars shall be paid to the lock-in physician at the beginning of each month for each assigned lock-in recipient.~~

~~(12) Designated lock-in providers shall remain effective for twelve (12) months. Changes in lock-in providers shall be permitted only upon:~~

~~(a) The request of the lock-in provider;~~

~~(b) If the recipient moves out of the lock-in providers area;~~

~~(c) If the recipient can show that it is inappropriate for him to be locked-in to a specific provider;~~

~~(d) If the lock-in provider withdraws from the Medicaid Program; or~~

~~(e) For the convenience of the department.~~

~~(13) The department shall consider whether or not a physician has contributed to overutilization when determining the selection for a lock-in physician or pharmacist.~~

~~(14) Except as provided for in subsection (15) of this section, a Medicaid payment shall not be made on behalf of a lock-in recipient for the following:~~

~~(a) Physician services provided by other than the lock-in physician or other medical services or supplies which have not been preauthorized through a referral from the lock-in physician;~~

~~(b) Prescription drugs prescribed by other than the lock-in physician or a physician authorized by the lock-in physician;~~

~~(c) Pharmacy services provided by other than the lock-in pharmacy; or~~

~~(d) Emergency services provide for a nonlife-threatening condition or a condition that would not result in irreparable harm without prior approval of the lock-in provider, unless the provider has made a reasonable effort to obtain prior-approval from the lock-in provider.~~

~~(15) Emergency services may be provided to prevent the~~

~~death, irreparable harm, immediate grave bodily harm, a life-threatening condition, or a permanent impairment of the recipient's health without prior approval of the lock-in provider.~~

~~(16) The recipient shall be issued a lock-in Medicaid identification card which specifies the designated lock-in providers and lock-in limitations.~~

~~Section 3. Appeal Rights. A recipient who receives advance notice of a decision to place him in lock-in status shall have the right to request a hearing in accordance with 907 KAR 1:563 prior to lock-in action by the department.~~

~~Section 4. Fraud and Abuse Referral. At any point if a determination is made that fraud, or abuse involving a substantial allegation or indication of fraud, has likely occurred, the recipient's case shall be referred for investigation in accordance with KRS 205.8453(3) and 205.8465.~~]

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brenda Parker or Lee Barnard (502) 564-9444, or Stuart Owen (502) 564-2015

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Program's lock-in provisions. The program locks recipients who have excessively utilized Medicaid services into receiving services from a few select providers. If the individual attempts to receive services from a provider who is not one of their lock-in providers, the Department for Medicaid Services (DMS) will not reimburse for the service except for emergency care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.8453 regarding utilization, fraud and abuse and to ensure that the funds allocated to Kentucky's Medicaid Program are properly expended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1), 205.520(3) and 205.8453 by establishing Medicaid lock-in requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1), 205.520(3) and 205.8453 by establishing Medicaid lock-in requirements. If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds hospitals (for nonemergency care) and controlled substance prescribers to the types of lock-in providers; establishes detailed lock-in criteria; establishes a lock-in referral form to be used by the recipient's designated primary care provider; and establishes a five (5) dollar payment per month for controlled substance prescribers. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce excessive Medicaid utilization in accordance with KRS 205.8453, 205.6310, and with 42 C.F.R. 431.54 and to implement pharmacy efficiencies as mandated by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 205.8453 and KRS 205.6310 by reducing excessive Medicaid utilization and to Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly by incorporating pharmacy efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 205.8453 and KRS 205.6310 by reducing excessive Medicaid utilization and with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly by incorporating pharmacy efficiencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who excessively utilize Medicaid services and providers who serve these Medicaid recipients will be affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Medicaid recipients who are locked in to certain providers will have to ensure that they only seek Medicaid services from their designated lock-in providers in order to ensure that DMS will pay for the services they received. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities identified in question (3). As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated individuals will have the benefit of appropriately utilizing Medicaid services. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS will experience a small costs due to the five (5) dollars a month payments to controlled substance prescribers; however, DMS projects that the amendment will reduce costs by $5 million (federal and state combined) annually.

(b) On a continuing basis: DMS will experience a small costs due to the $5 a month payments to controlled substance prescribers; however, DMS projects that the amendment will reduce costs by $5 million (federal and state combined) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.8453, 205.6310, Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly, and 42 C.F.R. 431.54.

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? DMS anticipates no revenue being generated for the first year for state or

local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated for subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS foresees some administrative costs will be necessary to implement the changes; however, DMS projects saving approximately $5 million (federal and state funds combined) annually as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS foresees some administrative costs will be necessary to implement the changes; however, DMS projects saving approximately $5 million (federal and state funds combined) annually as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54.

2. State compliance standards. KRS 205.8453 states,

"It shall be the responsibility of the Cabinet for Health and Family Services and the Department for Medicaid Services to control recipient and provider fraud and abuse by:

(1) Informing recipients and providers as to the proper utilization of medical services and methods of cost containment;

(2) Establishing appropriate checks and audits within the Medicaid Management Information System to detect possible instances of fraud and abuse;

(3) Sharing information and reports with other departments within the Cabinet for Health and Family Services, the Office of the Attorney General, and any other agencies that are responsible for recipient or provider utilization review; and

(4) Instituting other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.6310 states,

"The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency;

(3) Reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;

(4) Except for emergency room services rendered to children under the age of six (6), prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency; and

(5) The provisions of this section shall apply to any managed care program for Medicaid recipients."

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431.54 authorizes the locking in of recipients but requires the Medicaid agency to give recipients notice and a hearing opportunity prior to any lock-in action, requires that recipients have reasonable access to services and exempts emergency services from being locked in.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54. The amendment complies with the federal requirements established in 42 C.F.R. 431.54.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54 so one could argue that it is stricter as it is not mandatory. The amendment complies with the federal requirements established in 42 C.F.R. 431.54.

STATEMENT OF EMERGENCY
907 KAR 1:825E

This emergency administrative regulation is being promulgated to eliminate Medicaid reimbursement for care related to conditions acquired by patients in a hospital unrelated to the condition for which the patient was admitted to the hospital as well as eliminate coverage of events which never should have occurred. This action must be implemented on an emergency basis to: Ensure the availability of funding necessary for the continued operation of the Medicaid Program; protect the health, welfare, and safety of Medicaid inpatient hospital patients; and meet a deadline established by federal regulation. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Emergency Amendment)

907 KAR 1:825E. Diagnosis-related group (DRG) inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 205.510(16), 205.565, 205.637, 205.638, 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), 1395ww(d)(5)(F), x(mm), 1396a, 1396b, 1396d, 1396r-4, Pub.L. 111-148

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(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 42 U.S.C. 1396a, 1396r-4

EFFECTIVE: July 1, 2010

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 estab-

lishes the method for determining the amount payable via a diagnosis-related group methodology by the Medicaid Program for a hospital inpatient service including provisions necessary to enhance reimbursement pursuant to KRS 142.303 and 205.638.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Adjustment factor" means the factor by which non-neonatal care relative weights shall be reduced to offset the expenditure pool adjustment necessary to enhance neonatal care relative weights.

(3) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(4) "Base rate" means the per discharge hospital-specific DRG rate for an acute care hospital that is multiplied by the relative weight to calculate the DRG base payment.

(5) "Base year" means the state fiscal year period used to establish DRG rates.

(6) "Base year Medicare rate components" means Medicare inpatient prospective payment system rate components in effect on October 1 during the base year as listed in the CMS IPPS Pricer Program.

(7) "Budget neutrality" means that reimbursements resulting from rates paid to providers under a per discharge methodology do not exceed payments in the base year adjusted for inflation based on the CMS Input Price Index, which is the wage index published by CMS in the Federal Register.

(8) "Budget neutrality factor" means a factor that is applied to a DRG base rate or the direct graduate medical educational payment so that budget neutrality is achieved.

(9) "Capital cost" means capital related expenses including insurance, taxes, interest and depreciation related to plant and equipment.

(10) "CMS" means the Centers for Medicare and Medicaid Services.

(11) "CMS IPPS Pricer Program" means the software program published on the CMS website of http://www.cms.hhs.gov which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(12) "Cost center specific cost-to-charge ratio" means a ratio of a hospital's cost center specific total hospital costs to its cost center specific total charges extracted from the Medicare cost report corresponding to the hospital full fiscal year falling within the base year claims date period.

(13) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(14) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and designated as a critical access hospital by the department.

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

(16) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(17) "Diagnostic categories" means the diagnostic classifications containing one or more DRGs used by Medicare programs, assigned in the base year with modifications established in Section 2(15) of this administrative regulation.

(18)[~~(17)~~] "Diagnostic related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(19)[~~(18)~~] "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(20)[~~(19)~~] "DRG average length of stay" means the Kentucky arithmetic mean length of stay for each DRG, calculated by dividing the sum of patient days in the base year claims data for each DRG by the number of discharges for each DRG.

(21)[~~(20)~~] "DRG base payment" means the base payment for claims paid under the DRG methodology.

(22)[~~(21)~~] "Enhanced neonatal care relative weight" means a neonatal care relative weight increased, with a corresponding reduction to non-neonatal care relative weights, to facilitate reimbursing neonatal care at 100 percent of Medicaid allowable costs in aggregate by category.

(23)[~~(22)~~] "Federal financial participation" is defined by[~~in~~] 42 C.F.R. 400.203.

(24)[~~(23)~~] "Fixed loss cost threshold" means the amount, equal to $29,000, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(25)[~~(24)~~] "Geometric mean" means the measure of central tendency for a set of values expressed as the nth (number of values in the set) root of their product. [~~(25) "GII" means Global Insight, Incorporated.~~]

(26) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(27) "High intensity level II neonatal center" means an in-state hospital with a level II neonatal center which:

(a) Is licensed for a minimum of twenty-four (24) neonatal level II beds;

(b) Has a minimum of 1,500 Medicaid neonatal level II patient days per year;

(c) Has a gestational age lower limit of twenty-seven (27) weeks; and

(d) Has a full-time perinatologist on staff.

(28) "High volume per diem payment" means a per diem add-on payment made to hospitals meeting selected Medicaid utilization criteria established in Section 2(12) of this administrative regulation.

(29) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; or

(b) Which is recognized by the Centers for Medicare and Medicaid Services as a hospital-acquired condition.

(30)[~~(29)~~] "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(31)[~~(30)~~] "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 based on changes in the CMS input price index.

(32)[~~(31)~~] "Intrahospital transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.

(33)[~~(32)~~] "Level I neonatal care" or "Level 1 DRG" means care provided to newborn infants of a more intensive nature than the usual nursing care provided in newborn care units, on the basis of physicians' orders and approved nursing care plans, which are assigned to DRGs 385-390.

(34)[~~(33)~~] "Level II neonatal center" means a facility with a licensed level II bed which provides specialty care (DRGs 675-680) for infants which includes monitoring for apnea spells, incubator or other assistance to maintain the infant's body temperature, and feeding assistance.

(35)[~~(34)~~] "Level III neonatal center" means a facility with a licensed level III bed which provides specialty care (DRGs 685-690) of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.

(36)[~~(35)~~] "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(37)[~~(36)~~] "Low intensity level III neonatal center" means a facility with fewer than four (4) licensed level III neonatal beds.

(38)[~~(37)~~] "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(39)[~~(38)~~] "Medical education costs" means direct and allowa-

ble costs that are:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(40)[~~(39)~~] "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(41) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(42)[~~(40)~~] "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(43)[~~(41)~~] "Pediatric teaching hospital" is defined in KRS 205.565(1).

(44)[~~(42)~~] "Per diem rate" means the per diem rate paid by the department for inpatient care in an in-state psychiatric or rehabilitation hospital, inpatient care in a long-term acute care hospital, inpatient care in a critical access hospital or psychiatric or rehabilitation services in an in-state acute care hospital which has a distinct part unit.

(45)[~~(43)~~] "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

(46)[~~(44)~~] "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(47)[~~(45)~~] "Rebase" means to redetermine base rates, DRG relative weights, per diem rates, and other applicable components of the payment methodology using more recent data.

(48)[~~(46)~~] "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(49)[~~(47)~~] "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges in the state paid under the DRG methodology for the same time period.

(50)[~~(48)~~] "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(51)[~~(49)~~] "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(C).

(52)[~~(50)~~] "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(53)[~~(51)~~] "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

(54)[~~(52)~~] "Trending factor" means the inflation factor as applied to that period of time between the midpoint of the base year and the midpoint of the universal rate year.

(55)[~~(53)~~] "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(56)[~~(54)~~] "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.

(57)[~~(55)~~] "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(58)[~~(56)~~] "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1) An in-state acute care hospital shall be paid for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 1:012, on a fully-prospective per discharge basis.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 1:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

(a) A DRG base payment;

(b) If applicable, a high volume per diem payment; and

(c) If applicable, a cost outlier payment amount.

(3)(a) In assigning a DRG for a claim, the department shall exclude from the DRG consideration any secondary diagnosis code associated with:

1. A hospital-acquired condition; or

2. A service associated with a never event.

(b) A DRG assignment for payment purposes shall be based on the Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.

(c)[~~in effect in the Medicare inpatient prospective payment system at the time of rebasing.~~

~~(b) For a rate effective June 16, 2008,~~] The department shall assign to the base year claims data, DRG classifications from Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.

(4) A DRG base payment shall be calculated for a discharge by multiplying the hospital specific base rate by the DRG relative weight.

(5)(a) The department shall determine a base rate by calculating a case mix, outlier payment and budget neutrality adjusted cost per discharge for each in-state acute care hospital as described in subsections (5) through (10) of this section of this administrative regulation.

(b) A hospital specific cost per discharge used to calculate a base rate shall be based on base year inpatient paid claims data.

(c) [~~For a rate effective June 16, 2008,~~] A hospital specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data.

(6)(a) The department shall calculate a cost to charge ratio for the fifteen (15) Medicaid and Medicare cost centers displayed in paragraph (b) of this subsection.

(b) If a hospital lacks cost-to-charge information for a given cost center or if the hospital's cost-to-charge ratio is above or below three (3) standard deviations from the mean of a log distribution of cost-to-charge ratios, the department shall use the statewide geometric mean cost-to-charge ratio for the given cost center.

Table 1. Kentucky Medicaid Cost Center to Medicare Cost Report Cost Center Crosswalk

Kentucky Medicaid Cost Center	Kentucky Medicaid Cost Center Description	Medicare Cost Report Standard Cost Center
1	Routine Days	25
2	Intensive Days	26, 27, 28, 29, 30
3	Drugs	48, 56
4	Supplies or equipment	55, 66, 67
5	Therapy services excluding inhalation therapy	50, 51, 52
6	Inhalation therapy	49
7	Operating room	37, 38
8	Labor and delivery	39
9	Anesthesia	40
10	Cardiology	53, 54
11	Laboratory	44, 45
12	Radiology	41, 42
13	Other services	43, 46, 47, 57, 58, 59, 60, 61, 62, 63,

		63.5, 64, 65, 68
14	Nursery	33
15	Neonatal intensive days	30

(7)(a) For a hospital with an intern or resident reported on its Medicare cost report, the department shall calculate allocated overhead by computing the difference between the costs of interns and residents before and after the allocation of overhead costs.

(b) The ratio of overhead costs for interns and residents to total facility costs shall be multiplied by the costs in each cost center prior to computing the cost center cost-to-charge ratio.

(8) For an in-state acute care hospital, the department shall compile the number of patient discharges, patient days and total charges from the base year claims data. The department shall exclude from the rate calculation:

(a) Claims paid under a managed care program;

(b) Claims for rehabilitation and psychiatric discharges reimbursed on a per diem basis;

(c) Transplant claims; and

(d) Revenue codes not covered by the Medicaid Program.

(9)(a) The department shall calculate the cost of a base year claim by multiplying the charges from each accepted revenue code by the corresponding cost center specific cost-to-charge ratio.

(b) The department shall base cost center specific cost-to-charge ratios on data extracted from the most recently, as of June 1, finalized cost report.

(c) Only an inpatient revenue code recognized by the department shall be included in the calculation of estimated costs.

(10) Using the base year Medicaid claims referenced in subsection (8) of this section of this administrative regulation, the department shall compute a hospital specific cost per discharge by dividing a hospital's Medicaid costs by its number of Medicaid discharges.

(11) The department shall determine an in-state acute care hospital's DRG base payment rate by adjusting the hospital's specific Medicaid allowable cost per discharge by the hospital's case mix, expected outlier payments and budget neutrality.

(a)1. A hospital's case mix adjusted cost per discharge shall be calculated by dividing the hospital's cost per discharge by its case mix index; and

2. The hospital's case mix index shall be equal to the average of its DRG relative weights for acute care services for base year Medicaid discharges referenced in subsection (8) of this section of this administrative regulation.

(b)1. A hospital's case mix adjusted cost per discharge shall be multiplied by an initial budget neutrality factor.

2. The initial budget neutrality factor for a rate shall be 0.7065 for all hospitals.

3. When rates are rebased, the initial budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.

(c)1. Each hospital's case mix and initial budget neutrality adjusted cost per discharge shall be multiplied by a hospital-specific outlier payment factor.

2. A hospital-specific outlier payment factor shall be the result of the following formula: ((expected DRG non-outlier payments) - (expected proposed DRG outlier payments))/(expected DRG non-outlier payments).

(d)1. A hospital's case mix, initial budget neutrality and outlier payment adjusted cost per discharge shall be multiplied by a secondary budget neutrality factor.

2. The secondary budget neutrality factor for a hospital shall be 1.0562.

3. When rates are rebased, the secondary budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.

(12)(a) The department shall make a high volume per diem payment, except as excluded in paragraph (h) of this subsection, to an in-state acute care hospital with high Medicaid volume for base year covered Medicaid days referenced in subsection (8) of this section of this administrative regulation.

(b) High volume per diem criteria shall be based on the number of Kentucky Medicaid days or the hospital's Kentucky Medicaid utilization percentage.

(c)1. A high volume per diem payment shall be made in the form of a per diem add-on amount in addition to the DRG base payment rate encompassing the DRG average length-of-stay days per discharge.

2. The payment shall be equal to the applicable high volume per diem add-on amount multiplied by the DRG average length-of-stay associated with the claim's DRG classification.

(d)1. The department shall determine a per diem payment associated with Medicaid days-based criteria separately from a per diem payment associated with Medicaid utilization-based criteria.

2. If a hospital qualifies for a high volume per diem payment under both the Medicaid days-based criteria and the Medicaid utilization-based criteria, the department shall pay the higher of the two add-on per diem amounts.

(e) The department shall pay the indicated high volume per diem payment if either the base year covered Kentucky Medicaid inpatient days or Kentucky Medicaid inpatient day's utilization percent meet the criteria established in Table 2 below:

Table 2. High Volume Adjustment Eligibility Criteria			
Kentucky Medicaid Inpatient Days		Kentucky Medicaid Inpatient Days Utilization	
Days Range	Per Diem Payment	Medicaid Utilization Range	Per Diem Payment
0 - 3,499 days	$0 per day	0.0% - 13.2%	$0.00 per day
3,500 - 4,499 days	$22.50 per day	13.3% - 16.1%	$22.50 per day
4,500 - 5,999 days	$45.00 per day	16.2% - 21.6%	$45.00 per day
6,000 - 7,399 days	$80.00 per day	21.7% - 27.2%	$81.00 per day
7,400 - 10,999 days	$118.15 per day	27.3% - 100.00%	$92.75 per day
11,000 - 19,999 days	$163.49 per day		
20,000 and above days	$325.00 per day		

(f) The department shall use base year claims data referenced in subsection (8) of this section of this administrative regulation to determine if a hospital qualifies for a high volume per diem add-on payment.

(g) The department shall only change a hospital's classification regarding a high volume add-on payment or per diem amount during a rebasing year.

(h)1. The department shall not make a high volume per diem payment for a level I neonatal care, level II neonatal center, or level III neonatal center claim.

2. A level I neonatal care, level II neonatal center, or level III neonatal center claim shall be included in a hospital's high volume adjustment eligibility criteria calculation established in paragraph (e), Table 2, of this subsection.

(13)(a) The department shall make an additional cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each diagnostic category.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge, for purposes of comparing the discharge cost to the outlier threshold, by multiplying the sum of the hospital specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2. A Medicare operating or capital-related cost-to-charge ratio shall be extracted from the CMS IPPS Pricer Program.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2. The fixed loss cost threshold shall equal $29,000.

(f) A cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier

threshold.

(14) The department shall calculate a Kentucky Medicaid-specific DRG relative weight by:

(a)1. Selecting Kentucky base year Medicaid inpatient paid claims, excluding those described in subsection (8) of this section of this administrative regulation; and

2. [~~For a rate effective June 16, 2008,~~] A hospital-specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data;

(b)1. Reassigning the DRG classification for the base year claims based on the Medicare DRG in effect in the Medicare inpatient prospective payment system at the time of rebasing; and

2. [~~For a rate effective June 16, 2008,~~] The department shall assign to the base year claims data the Medicare grouper version 24 DRG classifications which were effective in the Medicare inpatient prospective payment system as of October 1, 2006;

(c) Removing the following claims from the calculation:

1. Claims data for a discharge reimbursed on a per diem basis including:

a. A psychiatric claim, defined as follows:

(i) An acute care hospital claim with a psychiatric DRG;

(ii) A psychiatric distinct part unit claim; and

(iii) A psychiatric hospital claim;

b. A rehabilitation claim, defined as follows:

(i) An acute care hospital claim with rehabilitation DRG;

(ii) A rehabilitation distinct part unit claim; and

(iii) A rehabilitation hospital claim;

c. A critical access hospital claim; and

d. A long term acute care hospital claim;

2. A transplant service claim as specified in subsection (21) of this section of this administrative regulation;

3. A claim for a patient discharged from an out-of-state hospital; and

4. A claim with total charges equal to zero;

(d) Calculating a relative weight value for a low volume DRG by:

1.a. Arraying a DRG with less than twenty-five (25) cases in order by the Medicare DRG relative weight in effect in the Medicare inpatient prospective payment system at the same time as the Medicare DRG grouper version, published in the Federal Register, relied upon for Kentucky DRG classifications; and

b. [~~For a rate effective June 16, 2008,~~] The department shall use the Medicare DRG relative weight which was effective in the Medicare inpatient prospective payment system as of October 1, 2006;

2. Grouping a low volume DRG, based on the Medicare DRG relative weight sort, into one (1) of five (5) categories resulting in each category having approximately the same number of Medicaid cases;

3. Calculating a DRG relative weight for each category; and

4. Assigning the relative weight calculated for a category to each DRG included in the category;

(e)1. Standardizing the labor portion of the cost of a claim for differences in wage and the full cost of a claim for differences in indirect medical education costs across hospitals based on base year Medicare rate components;

a. [~~For a rate effective June 16, 2008,~~] Base year Medicare rate components shall equal Medicare rate components effective in the Medicare inpatient prospective payment system as of October 1, 2005; and

b. Base year Medicare rate components used in the Kentucky inpatient prospective payment system shall include:

(i) Labor-related percentage and non-labor-related percentage;

(ii) Operating and capital cost-to-charge ratios;

(iii) Operating indirect medical education costs; or

(iv) Wage indices;

2.a. The department shall standardize costs using the following formula: standard cost = {((labor related percentage X costs)/Medicare wage index) + (nonlabor related percentage X costs)}/(1 + Medicare operating indirect medical education factor); and

b. [~~For a rate effective June 16, 2008,~~] The labor related percentage shall equal sixty-two (62) percent and the nonlabor related percentage shall equal thirty-eight (38) percent;

(f) Removing statistical outliers by deleting any case that is:

1. Above or below three (3) standard deviations from the mean cost per discharge; and

2. Above or below three (3) standard deviations from the mean cost per day;

(g) Computing an average standardized cost for all DRGs in aggregate and for each DRG, excluding statistical outliers;

(h) Computing DRG relative weights:

1. For a DRG with twenty-five (25) claims or more by dividing the average cost per discharge for each DRG by the statewide average cost per discharge; and

2. For a DRG with less than twenty-five (25) claims by dividing the average cost per discharge for each of the five (5) low volume DRG categories by the statewide average cost per discharge;

(i) Calculating, for the purpose of a transfer payment, Kentucky Medicaid geometric mean length of stay for each DRG based on the base year claims data used to calculate DRG relative weights;

(j) Employing enhanced neonatal care relative weights;

(k) Applying an adjustment factor to relative weights not referenced in paragraph (j) of this subsection to offset the level I, II, and III neonatal care relative weight increase resulting from the use of enhanced neonatal care relative weights; and

(l) Excluding high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal care relative weight calculations.

(15) The department shall:

(a) Separately reimburse for a mother's stay and a newborn's stay based on the diagnostic category assigned to the mother's stay and to the newborn's stay;

(b) Establish a unique set of diagnostic categories and relative weights for an in-state acute care hospital identified by the department as providing level I neonatal care, level II neonatal center care, or level III neonatal center care as follows:

1. The department shall exclude high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal center relative weight calculations;

2. The department shall reassign a claim that would have been assigned to a Medicare DRG 385-390 to a Kentucky-specific:

a. DRG 675-680 for an in-state acute care hospital with a level II neonatal center; and

b. DRG 685-690 for an in-state acute care hospital with a level III neonatal center;

3. The department shall assign a DRG 385-390 for a neonatal claim from a hospital which does not operate a level II or III neonatal center; and

4.a. The department shall compute a separate relative weight for a level II, or III neonatal intensity care unit (NICU) neonatal DRG;

b. The department shall use base year claims from level II neonatal centers, excluding claims from any high intensity level II neonatal center, to calculate relative weights for DRGs 675-680; and

c. The department shall use base year claims from level III neonatal centers to calculate relative weights for DRGs 685-690.

(16) The department shall:

(a) Expend in aggregate by category (level I neonatal care, level II or III neonatal center care) and not by individual facilities:

1. A total expenditure for level I neonatal care projected to equal 100 percent of Medicaid allowable cost for the universal rate year;

2. A total expenditure for level II neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year; or

3. A total expenditure for Level III neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year;

(b) Adjust neonatal care DRG relative weights to result in:

1. Total expenditures for level I neonatal care projected to equal 100 percent of Medicaid allowable cost for the universal rate year;

2. Total expenditures for level II neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year; or

3. Total expenditures for level III neonatal center care pro-

jected to equal 100 percent of Medicaid allowable cost for the universal rate year; and

(c) Not cost settle reimbursement referenced in this subsection.

(17) The department shall reimburse an individual:

(a) Hospital which does not operate a level II or III neonatal center, for level I neonatal care at the statewide average Medicaid allowable cost per each level I DRG;

(b) Level II neonatal center for level II neonatal care at the average Medicaid allowable cost per DRG of all level II neonatal centers; or

(c) Level III neonatal center for level III neonatal care at the average Medicaid allowable cost per DRG of all level III neonatal centers.

(18) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(a) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

1. The department shall calculate an average daily rate by dividing the DRG base payment by the statewide Medicaid geometric mean length-of-stay for a patient's DRG classification.

2. If a hospital qualifies for a high volume per diem add-on payment in accordance with subsection (2) of this section, the department shall pay the hospital the applicable per diem add-on for the DRG average length-of-stay.

3. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(b) For a hospital receiving a transferred patient, the department shall reimburse the DRG base payment, and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(19) The department shall treat a transfer from an acute care hospital to a qualifying postacute care facility for selected DRGs in accordance with paragraph (b) of this subsection as a postacute care transfer.

(a) The following shall qualify as a postacute care setting:

1. A psychiatric, rehabilitation, children's, long-term, or cancer hospital;

2. A skilled nursing facility; or

3. A home health agency.

(b) A DRG eligible for a postacute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(4)(C)(i).

(c) The department shall pay each transferring hospital an average daily rate for each day of stay.

1. A payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

2. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay, up to the full DRG base payment.

3. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2 of this paragraph of this subsection shall receive twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer.

(d) The per diem amount shall be the base DRG payment allowed divided by the statewide Medicaid geometric mean length of stay for a patient's DRG classification.

(20) The department shall reimburse for an intrahospital transfer to or from an acute care bed to or from a rehabilitation or psychiatric distinct part unit:

(a) The full DRG base payment allowed; and

(b) The facility-specific distinct part unit per diem rate, in accordance with 907 KAR 1:815, for each day the patient remains in the distinct part unit.

(21)(a) The department shall reimburse for a kidney, cornea, pancreas, or kidney and pancreas transplant on a prospective per discharge method according to the patient's DRG classification.

(b) A transplant not referenced in paragraph (a) of this subsection shall be reimbursed in accordance with 907 KAR 1:350.

(22) The department shall adjust the non-neonatal care DRGs to result in the aggregate universal rate year reimbursement for all services (non-neonatal and neonatal) to equal the aggregate base year reimbursement for all services (non-neonatal and neonatal inflated by the trending factor.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG consideration any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not bill:

(a) A recipient for:

1. Treatment for or related to a hospital-acquired condition;

2. A never event; or

3. Treatment related to a never event;

(b) The Cabinet for Health and Family Services for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Cabinet for Health and Family Services;

2. A never event associated with a child in the custody of the Cabinet for Health and Family Services; or

3. Treatment related to a never event associated with a child in the custody of the Cabinet for Health and Family Services;

(c) The Department for Juvenile Justice for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Department for Juvenile Justice;

2. A never event associated with a child in the custody of the Department for Juvenile Justice; or

3. Treatment related to a never event associated with a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for:

(a) Treatment for or related to a hospital-acquired condition;

(b) A never event; or

(c) Treatment related to a never event.

(5)The department's treatment of never events, including hospital-acquired conditions, shall not affect the calculation of base rates or relative weights:

(a) Previously implemented by the department; or

(b) As described in Section 2 of this administrative regulation.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and

(2) Exclude a service furnished by a home health agency, a skilled nursing facility or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5.[4.] Direct Graduate Medical Education Costs at In-state Hospitals with Medicare-approved Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education costs is not provided to the department, pursuant to federal regulation or law, the department shall not reimburse for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall reimburse for the direct costs of a graduate medical education program approved by Medicare as follows:

(a) A payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis; and

(b) The department shall determine an annual payment amount for a hospital as follows:

1. The hospital-specific and national average Medicare per intern and resident amount effective for Medicare payments on October 1 immediately preceding the universal rate year shall be provided by each approved hospital's Medicare fiscal intermediary;

2. The higher of the average of the Medicare hospital-specific per intern and resident amount or the Medicare national average amount shall be selected;

3. The selected per intern and resident amount shall be multiplied by the hospital's number of interns and residents used in the calculation of the indirect medical education operating adjustment factor. The resulting amount shall be the estimated total approved direct graduate medical education costs;

4. The estimated total approved direct graduate medical education costs shall be divided by the number of total inpatient days as reported in the hospital's most recently finalized cost report on Worksheet D, Part 1, to determine an average approved graduate medical education cost per day amount;

5. The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program; and

6. Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 6.[~~5.~~] Budget Neutrality Factors. (1) When rates are rebased, estimated projected reimbursement in the universal rate year shall not exceed payments for the same services in the prior year adjusted for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index[~~using the inflation factor prepared by GII for the universal rate year and adjusted for changes in patient utilization~~].

(2) The estimated total payments for each facility under the reimbursement methodology in effect in the year prior to the universal rate year shall be estimated from base year claims.

(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated from base year claims.

(4) If the sum of all the acute care hospitals' estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals' adjusted estimated payments under the prior year's reimbursement methodology, each hospital's DRG base rate and per diem rate shall be multiplied by a uniform percentage to result in estimated total payments for the universal rate year being equal to total adjusted payments in the year prior to the universal rate year.

Section 7.[~~6.~~] Reimbursement Updating Procedures. (1) For rate years between rebasing periods, the department shall annually, on July 1, update the hospital-specific base rates for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index from the midpoint of the previous rate year to the midpoint of the universal rate year [~~use the inflation factor prepared by GII for the universal rate year to inflate a hospital-specific base rate for rate years between rebasing periods~~].

(2) Except for an appeal in accordance with Section 21[~~20~~] of this administrative regulation, the department shall make no other adjustment.

(3) The department shall rebase DRG reimbursement rates on July 1, 2012 and every fourth year after that[~~every four (4) years~~].

Section 8.[~~7.~~] Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 9.[~~8.~~] Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of each 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 required by this subsection.

(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.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, 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 to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 10.[~~9.~~] Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. 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) 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, subject to the limitations of subparagraphs 1 and 2 of this paragraph..

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. 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 11.[~~10.~~] Trending of a Cost Report for DRG Re-basing Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or unaudited, shall be trended to the beginning of the universal rate year to update a hospital's Medicaid cost.

(2) The department shall trend for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index[~~use the inflation factor prepared by GII as the trending factor for the period being trended~~].

Section 12.[~~11.~~] 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 trend for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index[~~use the inflation factor prepared by GII as the indexing factor for the universal rate year~~].

Section 13.[~~12.~~] Readmission. (1) An inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for a readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 14.[~~13.~~] Reimbursement for Out-of-state Hospitals. (1) The department shall reimburse an acute care out-of-state hospital, except for a children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, for inpatient care:

(a) On a fully-prospective per discharge basis based on the patient's diagnostic category; and

(b) An all-inclusive rate.

(2) The all-inclusive rate referenced in subsection (1)(b) of this section of this administrative regulation shall:

(a) Equal the facility-specific Medicare base rate multiplied by:

1. 0.7065; and

2. The Kentucky-specific DRG relative weights after the relative weights have been reduced by twenty (20) percent;

(b) Exclude:

1. Medicare indirect medical education cost or reimbursement;

2. High volume per diem add-on reimbursement;

3. Disproportionate share hospital distributions; and

4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638; and

(c) Include a cost outlier payment if the associated discharge meets the cost outlier criteria established in Section 2(13) of this administrative regulation.

1. The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim.

2. The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

3. The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year; and

4. The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge's outlier threshold.

(3) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, an all-inclusive rate equal to the average all-inclusive base rate paid to in-state children's hospitals.

(4) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center at the Medicare operating and capital-related cost-to-charge ratio, extracted from the CMS IPPS Pricer Program in effect at the time the care was provided, multiplied by eighty-five (85) percent. For example, if care was provided on September 13, 2008, the cost-to-charge ratio used shall be the cost-to-charge ratio extracted from the CMS IPPS Pricer Program in effect on September 13, 2008.

(5) An out-of-state provider shall not be eligible to receive high volume per diem add-on payments, indirect medical education reimbursement or disproportionate share hospital payments.

(5) The department shall make a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to Quality Improvement Organization review and approval.

(a) The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim.

(b) The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

(c) The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.

(d) The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge's outlier threshold.

Section 15.[~~14.~~] Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:

a. Equal to the difference between payments made in accordance with Sections 2, 4, and 5[~~2, 3, and 4~~] of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined with no end of the year settlement; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271.

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2, 4, and 5[~~2, 3, and 4~~] of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. $7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds;

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System; and

(d) Make a supplemental payment to an in-state high intensity level II neonatal center of $2,870 per paid discharge for a DRG 675 - 680.

(4) An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the facility.

(5) For the purpose of this section, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 1:820.

(7) A payment made in accordance with this section shall be in

compliance with the limitations established in 42 C.F.R. 447.272.

Section 16.[~~15.~~] Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned or operated hospital the full cost of an inpatient service via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(2) To determine the amount of costs eligible for a CPE, a 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 costs remains, the department shall reconcile any difference with the provider.

Section 17.[~~16.~~] 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; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 18.[~~17.~~] 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)(a) 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.

(b) 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; and

(e) Require each provider to submit a cost report for the period:

1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and

2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 8 of this administrative regulation.

Section 19.[~~18.~~] Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision[~~A provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision~~].

Section 20.[~~19.~~] Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 21.[~~20.~~] Appeals. (1) An administrative review shall not be available for the following:

(a) A determination of the requirement, or the proportional amount, of a budget neutrality adjustment in the prospective payment rate; or

(b) The establishment of:

1. Diagnostic related groups;

2. The methodology for the classification of an inpatient discharge within a DRG; or

3. An appropriate weighting factor which reflects the relative hospital resources used with respect to a discharge within a DRG.

(2) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671.

Section 22.[~~21.~~] 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; and

(c) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009 edition.

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ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Hunter or Darlene Burgess (502) 564-5707 or Stuart Owen (502) 564-2015

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for inpatient hospital acute care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program's reimbursement for inpatient hospital acute care as required by 42 U.S.C. 1396d(a)(1) and KRS 205.560.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program's reimbursement for inpatient hospital acute care as required by 42 U.S.C. 1396d(a)(1) and KRS 205.560.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program's reimbursement for inpatient hospital acute care as required by 42 U.S.C. 1396d(a)(1) and KRS 205.560.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates Medicaid reimbursement of care related to conditions acquired by patients in a hospital unrelated to the condition for which the patient was admitted to the hospital and care associated with events which never should have happened. The policy only applies to acute care hospitals as the Centers for Medicare and Medicaid Services (CMS) exempts miscellaneous other hospital types from the policy. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with guidance from the Centers for Medicare and Medicaid Services (CMS). The amendment is also necessary to provide a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem - while in the hospital - unrelated to the pa-

tient's admitting problem.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment - which addresses Medicaid inpatient hospital reimbursement - conforms with KRS 194A030(2) which establishes the Department for Medicaid Services as the singles state agency authorized to administer Title XIX of the Social Security Act. The amendment also confirms with KRS 194A.050(1) which charges the Cabinet for Health and Family Services secretary to "adopt administrative regulations necessary under applicable laws to protect, develop, and maintain the health of the individual citizens of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is expected to assist in the effective administration of KRS 194A.050(1) by providing a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem - while in the hospital - unrelated to the patient's admitting problem.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 65 acute care hospitals 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. No compliance action is mandated; however, acute care hospitals will not be reimbursed for treatment of a condition a patient acquires - unrelated to their admitting condition – while in the hospital or for care associated with a never event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The Department for Medicaid Services (DMS) hopes that the incidence rate of hospital-acquired conditions and never events will drop as a result of the amendment; thus, benefiting inpatient hospital patients.

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

(a) Initially: The Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(b) On a continuing basis: DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment and any hospital owned by local government could be affected if patients in the hospital acquire conditions - while in the hospital - unrelated to the medical condition for which they sought treatment in the hospital.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), KRS 205.560(2), 42 U.S.C. 1396a(a)(10), 1396d(a)(1), Pub.L. 111-148 (Section 2702), 42 U.S.C. 1395ww(d)(4)(D), 42 C.F.R. 447.253, 447.272 and 447.250.

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? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? As a result of the amendment, DMS will experience minimal administrative cost in the form of Medicaid Management Information System (MMIS) programming changes. Conversely, the Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated for subsequent years. DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 111-148 (Section 2702), 42 U.S.C. 1395ww(d)(4)(D), 42 C.F.R. 447.253, 42 C.F.R. 447.272 and 42 C.F.R. 447.250.

2. State compliance standards. KRS 205.560(2) states, "(2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

a. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 C.F.R. 447.253(b)(1), State Medicaid programs must reimburse for inpatient hospital services "through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards."

3. Pursuant to 42 C.F.R. 447.253(b)(2), State Medicaid programs reimbursement for inpatient hospitals must "not exceed the upper payment limits as specified in 42 C.F.R. 447.272."

Pursuant to 42 C.F.R. 447.253(c), "In determining payment when there has been a sale or transfer of the assets of a hospital, the state's methods and standards must provide that payment rates can reasonably be expected not to increase in the aggregate solely as a result of changes of ownership, more than the payments would increase under Medicare under 413.130, 413.134, 413.153, and 413.157 of this chapter, insofar as these sections affect payments for depreciation, interest on capital indebtedness,

return on equity capital (if applicable), acquisition costs for which payments were previously made to prior owners, and the recapture of depreciation."

Pub.L. 111-148, Section 2702 states, "(a) IN GENERAL. The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall identify current State practices that prohibit payment for health care acquired conditions and shall incorporate the practices identified, or elements of such practices, which the Secretary determines appropriate for application to the Medicaid program in regulations. Such regulations shall be effective as of July 1, 2011, and shall prohibit payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations. The regulations shall ensure that the prohibition on payment for health care-acquired conditions shall not result in a loss of access to care or services for Medicaid beneficiaries."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment regarding hospital-acquired conditions has been mandated to become effective July 1, 2011 and is currently "encouraged" by the Centers for Medicare and Medicaid Services (CMS) via a letter to state Medicaid directors numbered "SMDL 08-004."

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal guidance.

STATEMENT OF EMERGENCY
907 KAR 3:090E

This emergency administrative regulation is being promulgated to establish a residential care model which is tailored to recipients' needs and to establish recipient safeguards. This administrative regulation is being amended in conjunction with a companion reimbursement regulation which establishes rates corresponding to the three levels of residential care (level I, II and III) established in this administrative regulation. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

907 KAR 3:090E. Acquired brain injury waiver services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441.300 - 310, 42 C.F.R. 455.100 - 106,[~~42 C.F.R. 441 Subpart G, 455 Subpart B,~~] 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: July 1, 2010

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 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services' Division of Community Alternatives.

(5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance. or another acute medical incident.

(6)[~~(5)~~] "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351;

(b) Submitted to the department:

1. For a level of care determination; and

2. No less than every twelve (12) months thereafter.

(7)[~~(6)~~] "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(8)[~~(7) "BISB" or "brain injury service branch", Division of Long Term Care and Community Alternatives, Cabinet for Health and Family Services means the brain injury service branch.~~

~~(8)~~] "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(9) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(10) "Budget allowance" is defined by KRS 205.5605(1).

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's plan of care.

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

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

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

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

(14) "Covered services and supports" is defined by KRS 205.5605(3).

(15) "Crisis prevention and response plan" means a plan developed by an interdisciplinary team to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(16) "DCBS" means the Department for Community Based Services.

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

(18) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has

not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(19) "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(20) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI[~~ABI's~~] recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(21) "Level of care certification" means verification, by the department, of ABI program eligibility for:

(a) An individual; and

(b) A specific period of time.

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

(23)[~~(22)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

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

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

(26)[~~(25)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(27)[~~(26)~~] "Patient liability" means the financial amount, determined by the department, that an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(28) "Personal services agency" is defined by KRS 216.710(8).

(29)[~~(27)~~] "Psychologist" is defined by KRS 319.010(8).

(30)[~~(28)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(31)[~~(29)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(32)[~~(30)~~] "Representative" is defined by KRS 205.5605(6).

(33)[~~(31)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(34)[~~(32)~~] "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(35)[~~(33)~~] "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(36)[~~(34)~~] "Transition plan" means a plan that is developed by an interdisciplinary team to aid an ABI recipient in exiting from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671[~~, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions~~];

(b) Be certified by the department prior to the initiation of the service;

(c) Be recertified at least annually by the department; [~~and~~]

(d) Have an office within the commonwealth of Kentucky; and

(e) Complete and submit a MAP-4100a to the department.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:672[~~, Provider enrollment, disclosure, and documentation for Medicaid participation~~];

(b) 907 KAR 1:673[~~, Claims processing~~]; and

(c) 902 KAR 20:078[~~, Operations and services; group homes~~].

(3) An ABI provider shall have a governing body that shall be:

(a) a legally-constituted entity within the Commonwealth of Kentucky; and

(b) responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an ABI recipient for whom the ABI provider cannot meet the service needs; and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. 1320d to 1320d-8.

(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which the rights may be exercised, including:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions; and

3. For supervised residential care[~~a residential~~], personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. Part 35); and

(d) Prohibiting the use of:

1. Prone or supine restraint;

2. Corporal punishment;

3. Seclusion;

4. Verbal abuse; or

5. Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility.

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:

(a) Department;

(b) ABI recipient's selected case manager;

(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee;

(f) Office of the Attorney General or its designee; or

(g) Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines [~~in~~] between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry; and

(d) Contain the following specific information:

1. The ABI recipient's name[~~, Social Security number~~] and Medical Assistance Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The plan of care, MAP-109;

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information as provided by law;

(f) Be secured against loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:

(a)1. Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

2. Maintain, for existing staff, documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test described in subparagraph 1 of this paragraph;

3. Ensure that an employee or volunteer who tests positive for TB or has history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

4. Before allowing a staff person or volunteer determined to have signs or symptoms of active disease to work, ensure that follow-up testing is administered by a physician with the test results indicating the person does not have active TB disease; and

5. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present.[~~staff person or volunteer performing direct care or a supervisory function has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and~~

~~2. Maintain documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;~~]

(b) For each potential employee or volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts or equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100; and

c. Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment; and

2. Within thirty (30) days of the date of hire or date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470;

(c) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not permit an employee or volunteer to transport an ABI recipient if the employee or volunteer has a conviction of Driving Under the Influence (DUI) during the past year;

(e) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse, neglect or exploitation;

(g) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry;

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

(i) Evaluate and document the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(j) Conduct and document periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a supervised residential care or adult day training [~~residential or structured day~~] provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensuring that staff who supervise medication administration[~~administering medication~~]:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, time of administration, and the recipient's name[~~and time~~] if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Establish policies[~~policy~~] and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when an ABI recipient is asleep;

(c) Mandate that:

1. The result of an evacuation drill be evaluated and modified as needed; and

2. Results of the prior year's evacuation drill be maintained on site[~~to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and~~

~~(c) Mandate that the result of an evacuation drill be evaluated and modified as needed~~].

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with an ABI recipient which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes at least six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, $2,000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services;

3. A speech-language pathologist providing speech therapy; or

4. A board certified behavior analyst; and

(f) Ensure that prior to the date of service as a volunteer, an individual receive training which shall include:

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer will provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by the provider.

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; [~~and~~]

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that [~~include highly restrictive procedures or~~] contain human rights restrictions; and

4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:

1. Within thirty (30) days of the recipient's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program:

(a) An individual shall:

1. Be at least eighteen (18) years of age;

2. Have acquired a brain injury of the following nature to the central nervous system:

a. An injury from physical trauma;

b. Damage from anoxia or from a hypoxic episode; or

c. Damage from an allergic condition, toxic substance, or another acute medical incident; and

3. Apply to be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(b) A case manager or support broker, on behalf of an applicant, shall submit a certification packet to the department containing the following[~~be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;~~

~~(b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;~~

~~(c) n application packet containing the following shall be submitted by a support broker on behalf of the applicant~~]:

1. A copy of the allocation letter;

2. An Assessment form - MAP-351;

3. A statement for the need for ABI waiver[~~long term care~~] services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10;

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(c)[~~(d)~~] An individual shall Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(d)[~~(e)~~] An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(e)[~~(f)~~] An individual shall meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(f)[~~(g)~~] An individual shall receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability; or

(b) Receiving a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility patient status[~~level of care~~] criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISB, and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C, if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Discharged[~~Terminated~~] from the ABI waiver program;

(c) Temporarily discharged from the ABI waiver program;

(d) Admitted to a nursing facility; [~~or~~]

(e) Changing the primary provider; or

(f) Changing case management agency.

(8) The department may exclude an individual from receiving ABI waiver services if the projected cost of ABI waiver services for the individual is reasonably expected to exceed the cost of nursing facility services for the individual[~~an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service~~].

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(e) An ABI recipient is no longer able to be safely served in the community; [~~or~~]

(f) The ABI recipient has reached maximum rehabilitation potential; or

(g) An ABI recipient is no longer actively participating in services within the approved plan of care as determined by the interdisciplinary team.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice to the department, the ABI recipient or legal representative and the case manager at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address and telephone number of each current ABI provider in the state;

2. Provide assistance to the ABI recipient in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the ABI recipient or legal representative;

5. Ensure the health, safety and welfare of the ABI recipient

until an appropriate placement is secured; and

6. Provide assistance to ensure a safe and effective service transition.

(11) Voluntary termination and loss of an ABI waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall:

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall:

1. Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop an individualized plan of care and update it as necessary based on changes in the recipient's medical condition and supports;

4. Include monitoring of the delivery of services and the effectiveness of the plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c. Include the ABI Plan of Care form - MAP-109 being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, updated thirty (30) days prior to discharge, and [~~updated as changes or recertification occurs, and~~] shall include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency;

b. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

g. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

h. Shall assist an ABI recipient in planning resource use and assuring protection of resources;

i.(i) Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence; and

(ii) For an ABI recipient receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the ABI recipient's supervised residential care provider site;

j. [~~Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis;~~

~~k.~~] Shall ensure twenty-four (24) hour availability of services; and

k.[~~l.~~] Shall ensure that the ABI recipient's health, welfare, and safety needs are met; and

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved plan of care;

c. The date of the service;

d. Beginning and ending time; [~~and~~]

e. The signature[~~, date of signature~~] and title of the individual providing the service; and

f. A quarterly summary which shall include:

(i) Documentation of monthly contact with each chosen ABI provider; and

(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care and of the effectiveness of the plan of care;

(b) Behavior programming which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. Reports involved in implementing the behavioral service plan; and

c. A monthly summary which assesses the participant's status related to the plan of care;

6. Be provided by a behavior specialist who shall:

a.(i) Be a psychologist;

(ii) Be a psychologist with autonomous functioning;

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

(vii) Be an advanced registered nurse practitioner (ARNP);

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature[~~, date~~] and title of the behavioral specialist; [~~and~~

~~d. A summary of data analysis and progress of the individual toward meeting goals of the services;~~]

(c) Companion services which shall:

1. Include a nonmedical service, supervision or socialization as indicated in the recipient's plan of care;

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved plan of care which are therapeutic and not diversional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

7. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~]; and

8. Be provided by:

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

b. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department;

c. [~~A group home licensed and operating in accordance with 902 KAR 20:078;~~

~~d.~~] A community habilitation program certified by the department; or

d. A supervised residential care provider;

(d) Supervised residential care level I, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;

4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5 of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;

5. May include the provision of up to five (5) unsupervised hours per day per recipient if the provider develops an individualized plan for the recipient to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the recipient's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the recipient's status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a

potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(e) Supervised residential care level II, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;

4. Shall provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the recipient's needs;

b. Be approved by the recipient's treatment team; and

c. Be documented in the recipient's plan of care which shall also contain periodic reviews and updates based on changes, if any, in the recipient's status;

5. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

7. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

8. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

9. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

10. Shall include provision of twenty-four (24) hour on-call support;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(f) Supervised residential care level III, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. May be provided in a single family home, duplex or apartment building to an ABI recipient who lives alone or with an unrelated roommate;

4. Shall not be provided to more than two (2) ABI recipients simultaneously in one (1) apartment or home;

5. Shall not be provided in more than two (2) apartments in one (1) building;

6. Shall, if provided in an apartment building, have staff:

a. Available twenty-four (24) hours per day and seven (7) days per week; and

b. Who do not reside in a dwelling occupied by an ABI recipient;

7. Shall provide less than twelve (12) hours of supervision or

support in the residence based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the recipient's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the recipient's status;

8. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

9. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

10. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

13. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service;

d. The signature and title of the individual providing the service; and

e. Evidence of at least one (1) daily face-to-face contact with the ABI recipient;

14. Shall not include the cost of room and board;

15. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

16. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

17. Shall not utilize a motor home;

18. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

19. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(g)[~~e. A staffed residence certified by the department;~~

~~(d) Community residential services which shall:~~

~~1. Include twenty-four (24) hour supervision in:~~

~~a. A community mental health center licensed and operating in accordance with 902 KAR 20:091;~~

~~b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or~~

~~c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;~~

~~2. Not include the cost of room and board;~~

~~3. Be available to an ABI recipient who:~~

~~a. Does not reside with a caregiver;~~

~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or~~

~~c. Demonstrates behavior that may result in potential legal problems if not ameliorated;~~

~~4. Utilize a modular home only if the:~~

~~a. Wheels are removed;~~

~~b. Home is anchored to a permanent foundation; and~~

~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~

~~5. Not utilize a motor home;~~

~~6. Provide a sleeping room which ensures that an ABI recipient:~~

~~a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;~~

~~b. Does not share a room with an individual who presents a potential threat; and~~

~~c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;~~

~~7. Provide assistance with daily living skills which shall include:~~

~~a. Ambulating;~~

~~b. Dressing;~~

~~c. Grooming;~~

~~d. Eating;~~

~~e. Toileting;~~

~~f. Bathing;~~

~~g. Meal planning, grocery shopping and preparation;~~

~~h. Laundry;~~

~~i. Budgeting and financial matters;~~

~~j. Home care and cleaning;~~

~~k. Social skills training;~~

~~l. Reduction or elimination of a maladaptive behavior;~~

~~m. Instruction in leisure skills; and~~

~~n. Instruction in self medication;~~

~~8. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care;~~

~~9. Provide or arrange for transportation to services, activities; or medical appointments as needed;~~

~~10. Include participation in medical appointments and follow-up care as directed by the medical staff; and~~

~~11. Be documented by a detailed staff note which shall include:~~

~~a. Progress toward goal and objectives identified in the approved plan of care;~~

~~b. The date of the service;~~

~~c. Beginning and ending time; and~~

~~d. The signature, date and title of the individual providing the service;~~]

~~(e)~~] Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) ABI recipients[~~a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes~~]; and

b. Included in the recipient's approved plan of care for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced registered nurse practitioner (ARNP); or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

10. Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date of signature~~] and title of the individual providing the service;

(h)[~~(f)~~] Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupation therapist in accordance with 201 KAR 28:130; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(i)[~~(g)~~] Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20:081;

c. A personal services agency; or

d. An ABI provider;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service; and

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services;~~]

(j)[~~(h)~~] A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Supervised residential care provider; or

e. [~~Group home agency;~~

~~e. Staffed residence agency; or~~

~~f.~~] Community habilitation program;

3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. Be limited to 336 hours in a twelve (12) month [~~168 hours in a six (6) month~~]period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~];

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c.[~~b.~~] The beginning and ending time; and

d.[~~c.~~] The signature[~~, date of signature~~] and title of the individual providing the service;

(k)[~~(i)~~] Speech, hearing and language services which shall be:

1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech language pathologist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(l) Adult day training[~~(j) Structured day program~~] services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20:066;

b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20:190;

c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

d. A community habilitation program;

e. A sheltered employment program; or

f. A therapeutic rehabilitation program;

2. [~~Be to~~]Rehabilitate, retrain and reintegrate an individual into the community;

3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;

4. Include the following services:

a. Social skills training related to problematic behaviors identi-

fied in the recipient's plan of care;

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with an ABI waiver service recipient's overall approved plan of care;

7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;

8. Be appropriate:

a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;

b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and

c. According to the approved plan of care and be therapeutic in nature and not diversional;

9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's plan of care;

10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;

11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time; [~~and~~]

d. The signature[~~, date~~] and title of the individual providing the service; and

e. A monthly summary that assesses the participant's status related to the approved plan of care;

(m)[~~(k)~~] Supported employment which shall be:

1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided by a:

a. Supported employment provider;

b. Sheltered employment provider; or

c. Structured day program provider;

3. Provided one-on-one;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI recipient's file;

5. Limited to forty (40) hours per week alone or in combination with structured day services;

6. An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;

7. Exclusive of work performed directly for the supported employment provider; and

8. Documented by a time and attendance record which shall include:

a. Progress towards the goals and objectives identified in the plan of care;

b. The date of service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(n)[~~(l)~~] Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an ABI recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 and include three (3) estimates for vision and hearing;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision or hearing programs;

6. Not be necessary for life support;

7. Meet applicable standards of manufacture, design and installation; and

8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; [~~or~~]

(o)[~~(m)~~] Environmental modifications which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to an ABI recipient if:

a. Ordered by a physician;

b. Prior-authorized by the department[~~BISB~~];

c. Submitted on a Request for Equipment form - MAP-95 by a case manager or support broker;

d. Specified in an ABI recipient's approved plan of care;

e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and

f. Without the modification, the ABI recipient would require institutionalization;

3. Not include a vehicle modification[~~or an electronic monitoring system~~];

4. Be limited to no more than $2,000 for an ABI recipient in a twelve (12) month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(p) An assessment which shall:

1. Be a comprehensive assessment which shall identify:

a. An ABI waiver recipient's needs; and

b. Services that an ABI recipient's family cannot manage or arrange for the recipient;

2. Evaluate an ABI waiver recipient's physical health, mental health, social supports, and environment;

3. Be requested by:

a. An individual requesting ABI waiver services;

b. A family member of the individual requesting ABI services; or

c. A legal representative of the individual requesting ABI services;

4. Be conducted:

a. By an ABI case manager or support broker; and

b. Within seven (7) calendar days of receipt of the request for an assessment;

5. Include at least one (1) face-to-face contact between the assessor and the ABI waiver recipient:

a. And, if appropriate, the recipient's family; and

b. In the ABI waiver recipient's home;

6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; or

(q) A reassessment:

1. Which shall be performed at least once every twelve (12) months;

2. Which shall be conducted:

a. Using the same procedures as for an assessment; and

b. By an ABI case manager or support broker;

3. The results of which shall be submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

4. Which shall not be reimbursable if the individual no longer meets ABI program eligibility requirements; and

5. Which shall not be retroactive.

Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

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

(2) A spinal cord injury for which there is no known or obvious

injury to the intracranial central nervous system;

(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;

(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;

(5) A birth defect;

(6) Mental retardation without an etiology to an acquired brain injury;

(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or

(8) Determination that the recipient has met his or her maximum rehabilitation potential.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents as follows:

(a) A Class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A Class II incident which shall:

1.a. Be serious in nature; or

b. Include a medication error;[~~or~~

~~c. Involve the use of a physical or chemical restraint;~~]

2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager or support broker; and

3. Be reported to the following by the provider agency:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. BISB within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect or exploitation;

c. Involve a medication error which requires a medical intervention or hospitalization;

d. Be an admission to an acute or psychiatric hospital;

e. Involve the use of a chemical or physical restraint; or

f.[~~or~~

~~d.~~] Be a death;

2. Be Immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB, within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB shall occur on the following business day.

(3) The following documentation with a complete written report shall be submitted for a death:

(a) A current plan of care;

(b) A current list of prescribed medications including PRN medications;

(c) A current crisis plan;

(d) Medication Administration Review (MAR) forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department;

(g) A coroner's report; and

(h) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual of age eighteen (18) years or older[~~between the age of twenty-one (21) to sixty-five (65) years of age~~]applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services form - MAP-10.

(3) The order of placement on the ABI waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services form - MAP-10 and by category of need.

(4) The ABI waiting list categories of need shall be emergency or nonemergency.

(5) To be placed in the emergency category of need, an individual shall be determined by the emergency review committee to meet the emergency category criteria established in subsection (8) of this section.

(6) The emergency review committee shall:

(a) Be comprised of three (3) individuals from the department:

1. Who shall each have professional or personal experience with brain injury or cognitive disabilities; and

2. Two (2) of whom shall not be supervised by the branch manager of the department's acquired brain injury branch;

(b) Meet during the fourth (4th) week of each month to review and consider applications for the acquired brain injury waiver program to determine if applicants meet the emergency category of need criteria established in subsection (8) of this subsection;

(7) A completed Acquired Brain Injury Waiver Services Program Application form - MAP-26 and an Acquired Brain Injury Waiver Services form - MAP-10 for an ABI waiting list applicant shall be submitted to the department no later than three (3) business days prior to fourth (4th) week of each month in order to be considered by the emergency review committee during that month's emergency review committee meeting.

(8) An applicant shall meet emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) An applicant who does not meet the emergency category of need criteria established in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.

(10)[~~of the individual as follows:~~

~~(a) Emergency. An immediate service is indicated as determined by:~~

~~1. The individual currently is demonstrating behavior related to his or her acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or~~

~~2. The individual is demonstrating behavior related to his or her acquired brain injury which has resulted in his or her arrest; or~~

~~(b) Nonemergency.~~

~~(4)~~] In determining chronological status of an applicant, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services form - MAP-10 shall be maintained and not change if an individual is moved from one (1) category of need to another.

(11)[~~(5)~~] A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12)[~~(6)~~] Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(13)[~~(7)~~] If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(14)[~~(8)~~] A written notification of placement on the waiting list shall be mailed to the individual or his or her legal representative

and case management provider if identified.

(15)[~~(9)~~] Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual and his or her legal representative and also the ABI case manager; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(16)[~~(10)~~] Reassignment of an applicant's category of need shall be completed based on the updated information and validation process.

(17)[~~(11~~] An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time that an individual's status changes.

(18)[~~(12~~] An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(19)[~~(13~~] If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or individual's legal representative and the ABI case manager.

(20)[~~(14)~~] The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(21)[~~(15)~~] Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI recipient participating in CDO shall include:

(a) Home and community support services;

(b) Community day support services;

(c) Goods or services; or

(d) Financial management.

(2) A home and community support service [~~which~~] shall:

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals;

(d)[~~and~~] Not be diversional in nature;

(e)[~~(d)~~] Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(f)1.[~~(e)1.~~] Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(3) A community day support service shall:

(a) Be available only under the consumer-directed option;

(b) Be provided in a community setting;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for:

1. Work;

2. Community activities;

3. Socialization;

4. Leisure; or

5. Retirement activities; and

(f) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(4) Goods or services shall:

(a) Be individualized;

(b) Be utilized to:

1. Reduce the need for personal care; or

2. Enhance independence within the consumer's home or community;

(c) Not include experimental goods or services; and

(d) Not include chemical or physical restraints.

(5)[~~(2)~~] To be covered, a CDO service shall be specified in a consumer's plan of care.

(6)[~~(3)~~] Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(7)[~~(4)~~] A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(8)[~~(5)~~] A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

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

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(9)[~~(6)~~] A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(10)[~~(7)~~] The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists;

(b) The recipient's plan of care indicates he or she requires more hours of service than the program can provide, thus jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present; or

(c) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(11)[~~.~~

~~(8)~~] The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(12)[~~(9)~~] Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

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

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional ABI services.

(13)[~~(10)~~] Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(14)[~~(11)~~] A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(15)[~~(12~~] A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(16)(a)[~~(13)(a)~~] The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; [~~and~~]

3. Protection of the consumer's health, safety, and welfare; and

4. A significant change has occurred in the recipient's:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the recipient's relocation.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(17)[~~(14)~~] Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(18)[~~(15)~~] A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer by phone or in person:

1. Twenty-four (24) hours per day, seven (7) days per week; and

2. To assist the consumer in obtaining community resources as needed;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(19)[~~(17)~~] For a CDO participant, a support broker may conduct an assessment or reassessment.

(20) Financial management shall:

(a) Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

(b) Include payroll processing associated with the individual hired by a consumer or the consumer's representative;

(c) Include:

1. Withholding local, state, and federal taxes; and

2. Making payments to appropriate tax authorities on behalf of a consumer;

(d) Be performed by an entity:

1. That is enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2. That is currently compliant with 907 KAR 1:671;

3. Which has at least two (2) years of experience working with individuals with an acquired brain injury; and

(e) Include preparation of fiscal accounting and expenditure reports for:

1. A consumer or consumer's representative; and

2. The department.

Section 9. Electronic Signature Usage. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An ABI provider which chooses to use electronic signatures shall:

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

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

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

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

(b) Develop a consent form which shall:

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

2.Attest to the signature's authenticity; and

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

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature immediately upon request.

Section 10.[~~9.~~] Appeal Rights. (1) An appeal of a department decision regarding a recipient[~~Medicaid beneficiary~~] based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 11.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-109 Prior Authorization for Waiver Services", July 2008[~~March 2007~~] edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification", July 2008[~~April 2007~~] edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", July 2008[~~May 2003~~] edition;

(d) "MAP-95, Request for Equipment Form", May 2010[~~June 2007~~] edition;

(e) "MAP-10 Waiver Services", July 2008[~~January 2007~~] edition;

(f) "Incident Report", July 2008[~~April 2007~~] edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", July 2008[~~March 2007~~] edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008[~~January 2000~~] edition;

(i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006 edition[~~"Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition~~];

(j) "MAP-351, Medicaid Waiver Assessment", July 2008[~~March 2007~~] edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; [~~and~~]

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

(m) "MAP-4100a", April 2009 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: June 26, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Pratt (502) 564-5198 or Dana McKenna

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

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

(a) How the amendment will change this existing administrative regulation: Amendments include establishing a residential care model tailored to recipient's needs which will be reimbursed accordingly. The new residential care model is comprised of three levels of care - supervised residential care levels I, II and III. Additional amendments include: incorporating by reference a form (MAP-4100a not previously incorporated) to be used by entities applying to become ABI waiver service providers; clarifying that the providers are prohibited from imposing the following on ABI service recipients: prone or supine restraint, corporal punishment, seclusion, verbal abuse or any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; inserting an annual criminal record check requirement for staff 25% – the department already requires this for the supports for community living (SCL) program; establishing that the human rights committee shall review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; lowering the ABI waiver program eligibility age to 18 rather than 21 years and remove the 65 age limit; utilizing the admission/discharge form (MAP-24C) for case management agency changes; involuntarily terminating an individual from ABI waiver service program participation if the individual is no longer actively participating in services within their approved plan of care; adding a case management quarterly summary requirement - the department already requires this for the SCL program; clarifying the behavior programming summary requirement; eliminating the group counseling limit of twice a week not to exceed ninety 90 minutes; reducing the group counseling limit from 12 recipients to 2 to 8 recipients; inserting an annual provider certification requirement where applicable; requiring respite staff notes to address progress toward goals and objectives identified in the approved plan of care; inserting an adult day training monthly summary requirement - the department already requires this for the SCL program; elaborating on assessment and reassessment provisions; expanding class III incidents to include a medication error involving hospitalization and an admission to an acute or psychiatric hospital; elevating chemical and physical restraints from a class II to class III incident; changing the name of structured day services to adult day training in order to be consistent with the SCL program; elaborating on emergency review committee and emergency application provisions; adding community day supports and goods and services to the consumer-directed option (CDO); consistent with the consumer-directed option policies in the home and community based waiver services regulation and the Michelle P. waiver services regulation adding the following reasons for involuntary termination from CDO participation: the recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present, or the recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff; adding CDO budget adjustment provisions; clarifying that a support broker must be available to a consumer 24 hours a day, 7 days a week by phone or in person; inserting CDO financial management provisions; and inserting a section establishing electronic signature provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the health, safety and welfare of ABI waiver service recipients and to replace the prior residential reimbursement model with one tailored to recipients' needs as well as more cost effective. Additionally, the amendment is necessary to clarify policies and ensure consistency with the corresponding waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 177 individuals receiving ABI waiver services and 24 providers of ABI waiver services pursuant to 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: Providers will have to comply with new requirements including a case management quarterly summary report, addressing progress toward goals and outcomes in respite staff notes, and utilizing the admission/discharge (MAP-24C) form for case management agency changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Some providers could experience additional minimal administrative costs as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The recipients' safety and welfare are enhanced as a result of the amendment.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment - implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/day, $175/day and $75/day respectively.

(b) On a continuing basis: DMS estimates that the amendment in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

(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 Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.300 - 310.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that the amendment - implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services that were 2 DMS levels - a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/da7, $175/day and $75/day respectively.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that the amendment - in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

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

Revenues (+/-):

Expenditures (+/-):

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

STATEMENT OF EMERGENCY
907 KAR 3:100E

This emergency administrative regulation is being promulgated to establish a residential care model which is tailored to recipients' needs as well as cost effective for the Medicaid program. This administrative regulation is being amended in conjunction with a companion acquired brain injury services regulation. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

907 KAR 3:100E. Reimbursement for acquired brain injury waiver services.[~~Payments for acquired brain injury services~~]

RELATES TO: 42 C.F.R. 441.300 - 310,[~~42 C.F.R. 441 Subpart G,~~] 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(3), 194A.050(1), 205.520(3)

EFFECTIVE: July 1, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the payment provisions relating to home - and community -based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the provider criteria established in 907 KAR 3:090, Section 2.

(3) "ABI recipient" means an individual who meets the ABI recipient criteria established in 907 KAR 3:090, Section 3.

(4) "Acquired brain injury waiver services" or "ABI waiver services" means home - and community-based waiver services provided to a Medicaid eligible individual aged twenty-one (21) to sixty-five (65) who has acquired a brain injury to his central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or from a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

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

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

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

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

(7)[~~(2)~~] "Department" means the Department for Medicaid Services or its designated agent.

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

Section 2. Coverage.[~~(1)~~] The department shall reimburse a participating provider for:

(1) An ABI waiver service provided to a Medicaid eligible person who meets the ABI waiver program requirements as established in 907 KAR 3:090; and

(2) A prior authorized ABI waiver service, if the service is:

(a) Included in the recipient's plan of care;

(b) Medically necessary; and

(c) Essential for the rehabilitation and retraining of the recipient.[~~(2) The department shall reimburse an ABI participating provider for a prior-authorized ABI waiver service, if the service is:~~

~~(a) Included in the plan of care and Is medically necessary, as defined in 907 KAR 3:130; and~~

~~(b) Essential for the rehabilitation and retraining of the recipient.~~]

Section 3. Exclusions to Acquired Brain Injury Waiver Program. Under the ABI waiver program, the department shall not reimburse a provider for a service provided:

(1) To an individual who has a condition identified in 907 KAR 3:090, Section 5[~~2~~]; or

(2) Which has not been prior authorized as a part of the recipient's plan of care.

Section 4. Payment Amounts. (1) A participating ABI waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a recipient.

(2) A participating ABI waiver service provider certified in accordance with 907 KAR 3:090 shall be reimbursed at the lesser of:

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

(b) The Medicaid fixed upper payment limit per unit of service as established in Section 5 of this administrative regulation.

Section 5. Fixed Upper Payment Limits. (1) The following respective rates shall be the fixed upper payment limits[~~, in effect on July 1, 2001,~~] for the corresponding respective ABI waiver services in conjunction with the corresponding units of service and unit of service limits:

Service	Unit of Service	Unit of Service Limit	Upper Payment Limit
Case management	1 month	1 unit per ABI recipient per month	$434.00 per month
Personal care	15 minutes	80 units per week	$5.56 per unit
Respite care	15 minutes	336 hours per 12-month period	$4.00 per unit
Companion	15 minutes	200 units per week	$5.56 per unit
Adult day training	15 minutes	160 units, alone or in combination with supported employment, per calendar week	$4.03 per unit
Supported employment	15 minutes	160 units, alone or in combination with adult day training, per calendar week	$7.98 per unit
Behavior programming	15 minutes		$33.61
Counseling - group	15 minutes	2 - 8 people in a group setting and 48 units per ABI recipient per calendar month	$5.75 per unit
Counseling - individual	15 minutes	16 units per day	$23.84 per unit
Occupational therapy	15 minutes	16 units per day	$25.90 per unit
Speech, hearing and Language services	15 minutes	16 units per day	$28.41 per unit
Specialized medical equipment and supplies (see subsection (2) of this section)	Per item	As negotiated by the department	As negotiated by the department

Environmental modification	Per modification	Actual cost not to exceed $2,000.00 per 12-month period	Actual cost not to exceed $2,000.00 per 12-month period
Supervised residential care level I	1 calendar day	1 unit per ABI recipient per calendar day	$200.00 per unit
Supervised residential care level II	1 calendar day	1 unit per ABI recipient per calendar day	$150.00 per unit
Supervised residential care level III	1 calendar day	1 unit per ABI recipient per calendar day	$75.00 per unit
Assessment	The entire assessment equals 1 unit	1 unit per ABI recipient	$100.00 per unit
Re-assessment	The entire reassessment equals 1 unit	1 unit per ABI recipient	$100.00 per unit
CDO home and community supports			Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO community day supports			Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO goods and services			Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
Support broker	1 calendar month	1 unit per ABI recipient per calendar month	$375.00
Financial management	15 minutes	8 units or $100.00 per month	$12.50 per unit

~~Service~~	~~Unit of Service~~	~~Upper Payment Limit~~
~~Case Management~~	~~1 month~~	~~$434.00~~
~~Personal Care~~	~~15 minutes~~	~~$5.56~~
~~Respite Care~~	~~1 hour (not to exceed 168 hours per six (6) month period)~~	~~$15.98 (maximum of $150.00 per day)~~
~~Companion~~	~~15 minutes~~	~~$5.56~~
~~Structured Day Program~~	~~1 hour (not to exceed forty (40) hours per week~~	~~$16.11~~
~~Supported Employment~~	~~1 hour~~	~~$31.92~~
~~Behavior Programming~~	~~15 minutes~~	~~$33.61~~
~~Counseling - Individual~~ ~~Counseling - Group~~	~~15 minutes~~ ~~15 minutes~~	~~$23.84~~ ~~$5.75~~
~~Occupational Therapy~~	~~15 minutes~~	~~$25.90~~
~~Service~~	~~Unit of Service~~	~~Upper Payment Limit~~
~~Speech, Hearing and Language Services~~	~~15 minutes~~	~~$28.41~~
~~Specialized Medical Equipment and Supplies (see subsection (2) of this section)~~	~~Per Item~~	~~As Negotiated by the Department~~
~~Environmental Modification~~	~~Per Modification~~	~~Actual cost not to exceed $1,000.00 per 6 month period~~
~~Community Residential Service (Staffed Residence)~~	~~Not Applicable~~	~~$200.00~~
~~Community Residential Service (Group Home)~~	~~Not Applicable~~	~~$90.00~~

(2) Specialized medical equipment and supplies shall be reimbursed on a per-item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:

(a) The equipment or supply is:

1.[~~They are~~] Not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

2.[~~(b) They are~~] Provided to an individual participating in the ABI waiver program.

(3) Respite care may exceed 336 hours in a twelve (12)[~~168 hours per six (6)~~] month period if an individual's normal care giver is unable to provide care due to a death in the family, serious illness, or hospitalization.

(4) [~~Payment for respite care provided in a setting other than a nursing facility shall not include the cost of room and board.~~]If an

ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.

(5) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall:

(a) Be made only for the supervision and training required as the result of the ABI recipient's disabilities; and

(b)[~~and shall~~] Not include payment for supervisory activities normally rendered.

(6)(a) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(b) For an individual receiving supported employment services, documentation shall be maintained in his or her record demonstrating that the services are not otherwise available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III). [~~(7) Except for state fiscal years (SFY) 2002 and 2003, The Medicaid fixed upper payment limits established in this section shall be adjusted by the department annually for inflation using the Standard and Poor's DRI Medical Index.~~]

Section 6. Payment Exclusions. Payment shall not include: (1) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility[~~. If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual~~];

(2) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(3) Excluding an environmental modification[~~as established in the Acquired Brain Injury Services and Reimbursement Program Manual~~], the cost of maintenance,
upkeep, or an improvement to a recipient's place of residence;

(4) The cost of a service that is not listed in the recipient's approved plan of care; or

(5) A service provided by a family member.

Section 7. Records Maintenance. A participating provider shall:

(1) Maintain fiscal and service records for at least six (6) years;[~~a period of at least five (5) years;~~]

(2) Provide, as requested by the department, a copy of, and access to, each record of the ABI waiver program retained by the provider pursuant to:

(a) Subsection (1) of this section; or

(b) 907 KAR 1:672[~~, Sections 2, 3, and 4~~]; and

(3) Upon request, make available service and financial records to a representative or designee of:

(a) The Commonwealth of Kentucky, Cabinet for Health and Family Services or its designee[~~designated agent~~];

(b) The United States Department for Health and Human Services, Comptroller General;

(c) The United States Department for Health and Human Services, the Centers for Medicare and Medicaid Services (CMS);

(d) The General Accounting Office;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

(f) The Commonwealth of Kentucky, Office of the Attorney General.

Section 8. [~~Payment Rate for State Fiscal Year (SFY) 2002. With the exception of rates for community residential services, which shall be as established in Section 5 of this administrative regulation, effective July 1, 2001 the payment rate that was in effect on June 30, 2001, for an ABI service shall remain in effect.~~

~~Section 9. Payment Rate for State Fiscal Year (SFY) 2003. Effective July 1, 2002, the payment rate that was in effect on June 30, 2002 for an ABI service shall remain in effect.~~

~~Section 10.~~] Appeal Rights. An ABI wavier provider may appeal department decisions as to the application of the administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.[~~Section 11. Incorporation by Reference. (1) "Acquired Brain Injury Services and Reimbursement Program Manual", Department for Medicaid Services, "September 2001 Edition", is incorporated by reference.~~

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY: June 25, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Pratt or Dana McKenna (502) 564-5198

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes reimbursement for supervised residential care levels I, II and III; inserts service limits; inserts consumer-directed option (CDO) reimbursement provisions; deletes the annual inflation adjustment factor for upper payment limits; deletes the rate freeze language from prior years; clarifies policy; deleting the manual from the material incorporated by reference as the regulation establishes policy and revising language or formatting to ensure compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that providers are reimbursed for provided supervised residential care levels I, II and III.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment amends acquired brain injury waiver service reimbursement within the parameters established by authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishes reimbursement for supervised residential care levels I, II and III; inserting service limits; inserting CDO reimbursement provisions and clarifying policy.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are twenty-four (24) providers of ABI waiver services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is anticipated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question(3). No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The primary benefit is the establishment of a new service category for which DMS will reimburse - supervised residential care level I, II and III.

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

(a) Initially: DMS estimates that the amendment will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) levels - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

(b) On a continuing basis: DMS estimates that the amendment will result in a cost avoidance of $466,200 in the second fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) categories - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

(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 Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

(9) Tiering: Is tiering applied? Tiering is not applied as the administrative regulations provisions apply equally to regulated entities.

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 Medicaid Services is affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.300 - 310.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration. To the contrary, DMS estimates that the amendment will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) levels - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration. To the contrary, DMS estimates that the amendment will result in a cost avoidance of $466,200 in the second fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services that previously had two DMS levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) categories - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

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

Revenues (+/-):

Expenditures (+/-):

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

STATEMENT OF EMERGENCY
907 KAR 5:005E

This emergency administrative regulation is being promulgated to establish the health insurance premium (HIPP) program. The HIPP program is designed to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees, if the department determines that HIPP program participation would be cost effective for the department. This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Integrity
(New Emergency Administrative Regulation)

907 KAR 5:005E. Health insurance premium payment (HIPP) program.

RELATES TO: 42 U.S.C. 1396e(a)-(e)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 42 U.S.C. 1396e(a)-(e).

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 the department's health insurance premium payment, or HIPP, program provisions as authorized by 42 U.S.C. 1396e(a) through (e). The HIPP program is designed to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees if cost effective, if the department determines that HIPP program participation would be cost effective for the department.

Section 1. Definitions. (1) "Buying in" means purchasing benefits from Medicare on behalf of an individual.

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

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Group health insurance plan" means any plan:

(a) Of, or contributed to by, an employer - including a self-insured plan - to provide health care directly or otherwise to the employer's employees, former employees, or the families of the employees or former employees; and

(b) Which:

1. Meets criteria established in Section 5000(b)(1) of the Internal Revenue Code of 1986, as amended, and

2. Includes continuation coverage pursuant to:

a. Title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986; or

b. Title VI of the Employee Retirement Income Security Act of 1974, as amended.

(5)"'Health insurance premium payment program participant" or "HIPP program participant" means an individual receiving health insurance benefits in accordance with this administrative regulation.

(6) "Income" means:

(a) Wages, salary, or compensation for labor or services;

(b) Money received from a statutory benefit including Social Security, Veteran's Administration pension, black lung benefit, or railroad retirement benefit; or

(c) Money received from any pension plan, rental property, or an investment including interest or dividends.

(7) "Income deduction" means a deduction from an individual's income for the purpose of obtaining or trying to obtain Medicaid eligibility.

(8) "Medicaid" means the Kentucky Medicaid program.

(9) "Medicaid enrollee" means an individual eligible for and participating in Medicaid pursuant to 907 KAR 1:011, 907 KAR 1:605, 907 KAR 1:640, and 907 KAR 1:645.

(10) "Spend-down program" means a program by which an individual becomes eligible for Medicaid benefits:

(a) By spending down income in excess of the Medicaid income threshold; and

(b) In accordance with 907 KAR 1:640.

(11) "State plan" is defined in 42 C.F.R. 430.10

(12) "Wrap-around coverage" means coverage of a benefit not covered by an individual's group health insurance plan.

Section 2. HIPP Program Eligibility and Enrollment. (1) A Medicaid enrollee, or a person acting on the Medicaid enrollee's behalf, shall cooperate in providing information to the department necessary for the department to establish availability and cost effectiveness of a group health insurance plan by:

(a) Completing the Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41; and

(b) Submitting the Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41 to the individual's local Department for Community Based Services office.

(2) If a Medicaid enrollee HIPP program applicant, participant, parent, guardian, or caretaker fails to provide information to the department, within ten (10) days of the department's request, necessary to determine availability and cost effectiveness of a group health insurance plan, the department shall not enroll the applicant in the HIPP program unless good cause for failure to cooperate is demonstrated to the department within thirty (30) days of the department's denial.

(3) Good cause for failure to cooperate shall be limited to the following circumstances:

(a) A serious illness or death of the applicant, participant, parent, guardian, or caretaker or of a member of the applicant's, participant's, parent's, guardian's, or caretaker's family occurred;

(b) A family emergency or household disaster – for example a fire, tornado, flood, or similar;

(c) The applicant, participant, parent, guardian, or caretaker demonstrates that a good cause beyond the applicant's participant's parent's guardian's, or caretaker's control occurred; or

(d)1. Failure to receive the department's request for information or notification for a reason not attributable to the applicant, participant, parent, guardian, or caretaker occurred.

2. Lack of a forwarding address shall be attributable to the applicant, participant, parent, guardian, or caretaker.

(4) For a Medicaid enrollee who is a HIPP program participant:

(a) The department shall pay all group health insurance plan premiums and deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under Medicaid; and

(b)1. The individual's group health insurance plan shall be the primary payer; and

2. The department shall be the payer of last resort.

(5) For a HIPP program participating family member who is not a Medicaid enrollee:

(a) The department shall pay a HIPP program premium; and

(b) Not pay a deductible, coinsurance or other cost-sharing obligation.

(6) If an individual who was a Medicaid enrollee at the time the department initiated a HIPP program cost effectiveness review for the individual loses Medicaid eligibility by the time the cost effectiveness review has been conducted, the department shall not enroll the individual or any family member into the HIPP program.

Section 3. Wrap-around Coverage. (1) If a service to which a health insurance premium payment program participant would be entitled via Medicaid is not provided by the individual's group health insurance plan, the department shall reimburse for the service.

(2) For a service referenced in subsection (1) of this section, the department shall reimburse:

(a) The provider of the service; and

(b) In accordance with the department's administrative regulation governing reimbursement for the given service. For example, a wrap-around dental service shall be reimbursed in accordance with 907 KAR 1:626.

Section 4. Cost Effectiveness. (1) Enrollment in a group health insurance plan shall be considered cost effective when the cost of paying the premiums, coinsurance, deductibles and other cost-sharing obligations, and additional administrative costs is estimated to be less than the amount paid for an equivalent set of Medicaid services.

(2) When determining cost effectiveness of a group health insurance plan, the department shall consider the following information:

(a) The cost of the insurance premium, coinsurance, and deductible;

(b) The scope of services covered under the insurance plan, including exclusions for pre-existing conditions, exclusions to enrollment, and lifetime maximum benefits imposed;

(c) The average anticipated Medicaid utilization:

1. By age, sex, and coverage group for persons covered under the insurance plan; and

2. Using a statewide average for the geographic component;

(d) The specific health-related circumstances of the persons

covered under the
insurance plan; and

(e) Annual administrative expenditures of an amount determined by the department per Medicaid participant covered under the group health insurance plan.

Section 5. Cost Effectiveness Review. (1) The department shall complete a cost effectiveness review:

(a) At least once every six (6) months for an employer-related group health insurance plan; or

(b) Annually for a non-employer-related group health insurance plan.

(2) The department shall perform a cost effectiveness redetermination if:

(a) A predetermined premium rate, deductible, or coinsurance increases;

(b) Any of the individuals covered under the group health insurance plan lose full Medicaid eligibility; or

(c) There is a:

1. Change in Medicaid eligibility;

2. Loss of employment when the insurance is through an employer; or

3. A decrease in the services covered under the policy.

(3)(a) A health insurance premium payment program participant who is a Medicaid enrollee, or a person on that individual's behalf, shall report all changes concerning health insurance coverage to the participant's local Department for Community Based Services (DCBS), Division of Family Support within ten (10) days of the change.

(b) Except as allowed in subsection (4) of this section, if a Medicaid enrollee who is a health insurance premium payment program participant fails to comply with paragraph (a) of this subsection, the department shall disenroll the HIPP program participating Medicaid enrollee, and any family member enrolled in the HIPP program directly through the individual if applicable, from the HIPP program.

(4) The department shall not disenroll an individual from HIPP program
participation if the individual demonstrates to the department, within thirty (30) days of notice of HIPP program disenrollment, good cause for failing to comply with subsection (3) of this section.

(5) Good cause for failing to comply with subsection (3) of this section shall exist if:

1. There was a serious illness or death of the individual, parent, guardian, or caretaker or a member of the individual's, parent's guardian's, or caretaker's family;

2. There was a family emergency or household disaster – for example a fire, flood, tornado, or similar;

3. The individual, parent, guardian, or caretaker offers a good cause beyond the individual's, parent's, guardian's, or caretaker's control; or

4.a. There was a failure to receive the department's request for information or
notification for a reason not attributable to the individual, parent, guardian, or caretaker.

b. Lack of a forwarding address shall be attributable to the individual, parent,
guardian, or caretaker.

Section 6. Coverage of Non-Medicaid Family Members. (1) If determined to be cost effective, the department shall enroll a family member who is not a Medicaid enrollee into the HIPP program if the family member has group health insurance plan coverage through which the department can obtain health insurance coverage for a Medicaid-enrollee in the family.

(2) The needs of a family member who is not a Medicaid enrollee shall not be taken into consideration when determining cost effectiveness of a group health insurance
plan.

(3) The department shall:

(a) Pay a HIPP program premium on behalf of a HIPP program participating family member who is not a Medicaid enrollee; and

(b) Not pay a deductible, coinsurance, or other cost-sharing obligation on behalf of a HIPP program-participating family member who is not a Medicaid enrollee.

Section 7. Exceptions. The department shall not pay a premium:

(1) For a group health insurance plan if the plan is designed to provide coverage for a period of time less than the standard one-year coverage period;

(2) For a group health insurance plan if the plan is a school plan offered on the basis of attendance or enrollment at the school;

(3) If the premium is used to meet a spend-down obligation when all persons in the household are eligible or potentially eligible only under the spend-down program pursuant to 907 KAR 1:640.

(a) If any household member is eligible for full Medicaid benefits, the premium shall be paid if it is determined to be cost effective when considering only the household members receiving full Medicaid coverage.

(b) In a case described in subparagraph 1 of this paragraph, the premium shall not be allowed as a deduction to meet the spend-down obligation for those household members participating in the spend-down program;

(4) For a group health insurance plan if the plan is an indemnity policy which supplements the policy holder's income or pays only a predetermined amount for services covered under the policy; or

Section 8. Duplicate Policies. If more than one (1) group health insurance plan or policy is available, the department shall pay only for the most cost-effective plan except as allowed in subsection (2) of this section.

(2) In a circumstance where the department is buying in to the cost of Medicare Part A or Part B for an eligible Medicare beneficiary, the cost of premiums for a Medicare supplemental insurance policy may also be paid if the department determines that it is likely to be cost effective to do so.

Section 9. Discontinuance of Premium Payments. (1) If all Medicaid-enrollee household members covered under a group health insurance plan lose Medicaid eligibility, the department shall discontinue HIPP program payments as of the month of Medicaid ineligibility.

(2) If one (1) or more, but not all, of a household's Medicaid-enrollee members covered under a group health insurance plan lose Medicaid eligibility, the department shall re-determine cost effectiveness of the group health insurance plan in accordance with Section 5(2).

Section 10. Health Insurance Premium Payment Program Payment Effective Date. (1)(a) If health insurance premium payment program payments for cost-effective group health insurance plans shall begin with the month the health insurance premium payment program application is received by the department, or the effective
date of Medicaid eligibility, whichever is later.

(b) If an individual is not currently enrolled in a cost effective group health insurance plan, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

(2) The department shall not make a payment for a premium which is used as an
income deduction when determining individual eligibility for Medicaid.

Section 11. Premium Refunds. The department shall be entitled to any premium refund due to:

(1) Overpayment of a premium; or

(2) Payment for an inactive policy for any time period for which the department paid the premium.

Section 12. Notice. The department shall inform a health insurance premium payment program:

(1) Applicant, in writing, of the department's initial decision regarding cost effectiveness of a group health insurance plan and health insurance premium payment program payment; or

(2) Participating household, in writing:

(a) If health insurance premium payment program payments are being discontinued due to Medicaid eligibility being lost by all individuals covered under the group health insurance plan;

(b) If the group health insurance plan is no longer available to the family; or

(c) Of a decision to discontinue health insurance premium payment program payment due to the department's determination that the policy is no longer cost effective.

Section 14. Federal Financial Participation. (1) The department's health insurance premium program shall be contingent upon the receipt of federal financial participation for the program.

(2) If federal financial participation is not provided to the department for the department's health insurance premium program, the program shall cease to exist.

(3) If the Centers for Medicare and Medicaid Services (CMS) disapproves a provision stated in an amendment to the state plan, which is also stated in this administrative regulation, the provision shall be null and void.

Section 15. Material Incorporated by Reference. (1) The "Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41", September 2009 edition is incorporated by reference into this administrative regulation.

(2) The material referenced in subsection (1) of this section is available at:

(a) http://www.chfs.ky.gov/dms/incorporated.htm; or

(b)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: June 25, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Department for Medicaid Services' (DMS's) health insurance premium payment (HIPP) program provisions. The HIPP program is a program by which DMS purchases health insurance coverage for an individual by paying the individual's (and family members if applicable) health insurance premiums, deductibles and coinsurance if doing so would be cost effective to DMS. To qualify for the HIPP program, an individual (or at least one individual in the case of a family enrolling in the HIPP program) must be Medicaid eligible; however, the actual benefits are provided by the individual's group health insurance carrier.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide cost-effective medical benefits to Medicaid individuals; thus, prudently utilizing DMS's resources.

(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 providing cost-effective medical benefits to Medicaid individuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing cost-effective medical benefits to Medicaid individuals.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Affected individuals include approximately 1,000 Medicaid individuals and family members that DMS projects could be enrolled into HIPP by calendar year 2013.

(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: Potential HIPP program enrollees will need to provide all required information, including their health insurance carrier's information, to DMS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients would have access to private health insurance with no out-of-pocket costs and non-Medicaid recipients (who are in a household that is participating in the HIPP program) could receive health insurance coverage if determined to be cost effective by DMS.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that 100 could be enrolled into HIPP in calendar year 2010, resulting in a savings to DMS of approximately $2.0 million ($1,593,400 federal/$406,600 state)

(b) On a continuing basis: DMS projects the following HIPP enrollment and corresponding savings for calendar years 2011, 2012 and 2013 respectively:

1. 2011: 500 cases with a savings of $10.0 million ($7,967,000 federal/$2,033,000 state)

2. 2012: 750 cases with a savings of $15.0 million ($11,950,500 federal/$3,049,500)

3. 2013: 1,000 cases with a savings of $20.0 million $15,934,000 federal/$4,066,000 state) The projected savings assume that all individuals selected for HIPP program participating will participate; thus, actual savings could possibly be less. DMS intends to aggressively educate potential HIPP program participants regarding the benefits of the HIPP program in order to achieve a high participation rate.

(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 from state general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied as children are exempt from Medicaid disenrollment pursuant to 42 U.S.C. 1396e(b)(2).

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 Medicaid Services will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), 205.560(1), 194A.030(2), 194A.050(1), 194A.010(1) and 42 U.S.C. 1396e(a) through (e).

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? DMS projects no revenue to be generated by the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue to be generated by the administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS anticipates that 100 could be enrolled into HIPP in calendar year 2010, resulting in a net savings to DMS of approximately $2.0 million ($1,593,400 federal/$406,600 state.)

(d) How much will it cost to administer this program for subsequent years? DMS projects the following HIPP enrollment and corresponding savings for calendar years 2011, 2012 and 2013 respectively:

1. 2011: 500 cases with a savings of $10.0 million ($7,967,000 federal/$2,033,000 state)

2. 2012: 750 cases with a savings of $15.0 million ($11,950,500 federal/$3,049,500)

3. 2013: 1,000 cases with a savings of $20.0 million ($15,934,000 federal/$4,066,000 state.) The projected savings assume that all individuals selected for HIPP program participating will participate; thus, actual savings could possibly be less. DMS intends to aggressively educate potential HIPP program participants regarding the benefits of the HIPP program in order to achieve a high participation rate.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 13, 2010)

201 KAR 20:510. Voluntary relinquishment of a license or credential.

RELATES TO: KRS 314.071(2)
STATUTORY AUTHORITY: KRS 314.131(1)**, (2), 314.137**
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 314.131(2) requires the board to license duly qualified applicants engaged in the practice of nursing. KRS 314.137 authorizes the board to establish the credentialing requirements of dialysis technicians. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for a nurse or a dialysis technician who wishes to relinquish a license or credential prior to its expiration.[**~~KRS 314.071(2) requires a nurse to reinstate a lapsed license. This administrative regulation sets the procedure for a nurse who desires to relinquish a license prior to its expiration date. The same procedure shall apply to advanced practice registered nurses, sexual assault nurse examiners, and dialysis technicians with the credential issued by the board.~~**]**

Section 1. (1) A person holding a license or credential issued by the board may voluntarily relinquish that license or credential prior to its expiration date.
(2) The request to relinquish shall be in writing to the board.
(3) The board shall **allow the relinquishment of a[**~~lapse the~~**]** license or credential unless the person is:
(a) currently under investigation or being monitored by the board; or
(b) subject to disciplinary action by any board of nursing.

Section 2. **A person who voluntarily relinquishes a license or credential according to the provisions established in Section 1 of this administrative regulation shall be reinstated by meeting the applicable requirements for each respective license or credential established in:**
(1) 201 KAR 20:225, Section 1;
(2) 201 KAR 20:056, Section 6;
(3) 201 KAR 20:411, Section 9; and
(4) 201 KAR 20:470, Section 4.[~~A person who has voluntarily relinquished his or her license or credential shall be subject to the reinstatement provisions of 201 KAR 20:056, Section 6; 201 KAR 20:225, Section 1; 201 KAR 20:411, Section 9; or 201 KAR 20:470, Section 4; as applicable.~~**]**

JIMMY ISENBERG, President
APPROVED BY AGENCY: April 16, 2010
FILED WITH LRC: April 23, 2010 at noon
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov

TRANSPORATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended at ARRS, July 13, 2010)

601 KAR 2:020. Drivers' privacy protection.

RELATES TO: KRS 61.874, 61.878(5), 186.018, 187.310, 411.402, 411.406, 15 U.S.C. 1231-1233, 18 U.S.C. 2721, 42 U.S.C. 7401-7459, 49 U.S.C. 31301-31317
STATUTORY AUTHORITY: KRS 187.300(1), 187.310(1), 18 U.S.C. 2721
NECESSITY, FUNCTION, AND CONFORMITY: KRS 187.300(1) authorizes[~~requires~~] the cabinet to promulgate administrative regulations to implement KRS Chapter 187. KRS 187.310(1) requires the cabinet to furnish, upon request, an abstract of the operating record of a person subject to KRS 187.290 to 187.620. 18 U.S.C. 2721 authorizes[~~mandates~~] the information that shall and shall not[~~which can and cannot~~] be included in information sold or otherwise distributed about a motor vehicle operator or owner[~~motor vehicle operators or owners~~]. This administrative regulation establishes the circumstances and conditions governing the distribution or sale of motor vehicle operator or owner personal information.

Section 1. Definition. "Personal information" means information that identifies an individual including the following:
(1) Name;
(2) Address, excluding the zip code;
(3) Social Security number;
(4) Date of birth;
(5) Driver identification number;
(6) Telephone number;
(7) Photograph; and
(8) Medical or disability information.

Section 2. [~~A person's driver's license photo or computerized image, Social Security number, or medical or disability information from a motor vehicle record, driver's license or permit, motor vehicle registration, or identification document shall not be disseminated except for:~~
~~(1) Use by a government agency including a court or law enforcement agency in carrying out its functions or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;~~
~~(2) Use in connection with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;~~
~~(3) Use by an insurer or insurance support organization, or by a self-insured entity, or its agents, employee, or contractor, in connection with claims investigation activities, antifraud activities, rating, or underwriting; or~~
~~(4) Use by employer, or its agents or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 through 31317.~~

~~Section 3.~~] (1) In the Driver Licensing Computer Information System, the following shall not be considered personal information:
(a) Driver status; and
(b) Violation or conviction of a traffic law.
(2) The information included in the Driver Licensing Computer System shall not be distributed or sold except as established in[~~contrary to~~] KRS 187.310.

Section 3.[~~4.~~] Required Disclosures. (1) Personal information referred to in Section 1 or 2 of this administrative regulation shall be disclosed in accordance with subsection (2) of this section for use in connection with:
(a) Matters of motor vehicle or driver safety and theft;
(b) Motor vehicle emissions;
(c) Motor vehicle product alterations, recalls, or advisories;
(d) Performance monitoring of motor vehicles or[~~and~~] dealers

by motor vehicle manufacturers; or

(e) Removal of nonowner records from the original owner records of motor vehicle manufacturers.

(2) The disclosure of personal[~~this~~] information shall be to carry out the provisions of the:

(a) Federal Automobile Information Disclosure Act, 15 U.S.C. 1231-1233; or

(b) [~~et seq.;~~

~~(b) Motor Vehicle Information and Cost Saving Act, 15 U.S.C. 1901 et seq.;~~

~~(c) National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381 et seq.;~~

~~(d) Anticar Theft Act of 1992, 15 U.S.C. 2021 et seq.;~~

~~(e)~~] Clean Air Act, 42 U.S.C. 7401-7459 [~~et seq., as amended; and~~

~~(f) All statutes and agency administrative regulations enacted or adopted pursuant to the authority of, or to attain compliance with, the federal Acts listed in paragraphs (a) through (e) of this subsection~~].

Section 4.[~~5.~~] Personal information in the Driver Licensing Computer Information System or the Automated Vehicle Information System[~~,~~] including a computerized image, Social Security number, medical or disability information from a motor vehicle record, motor vehicle registration, or personal information relating to the owner of a boat, shall not be released except for the following reasons:

(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions **by submission of a notarized Transportation Cabinet form TC 96-16G, Request for Motor Vehicle or Boat Record that Includes Personal Information to be Completed by a Governmental Agency**;

(2) For use in connection with matters relating to the following:

(a) Motor vehicle or driver safety;

(b) Motor vehicle theft;

(c) [~~Motor vehicle emissions;~~

~~(d)~~] Motor vehicle product alterations, recalls, or advisories;

(d)[~~(e)~~] Performance monitoring of motor vehicles, motor vehicle parts, or dealers;

(e)[~~or~~

~~(f)~~] Removal of nonowner records from the original owner records of motor vehicle manufacturers; or

(f) Theft of motor fuel as established in KRS 411.402**, 411.406, and 601 KAR 1:220[**~~and 411.406~~**]**.

(3) For use in the normal course of business by a legitimate business or its agent, employee, or contractor, but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agent, employee, or contractor; or

(b) If the submitted information is not correct or is no longer correct, to obtain the correct information, in order to prevent fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in connection with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency or before a self-regulatory body, including the service of process;[~~,~~] investigation in anticipation of litigation; or[~~,~~] and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(5) If the personal information is not published, redisclosed, or used to contact an individual, for use in:

(a) Research activities; or

(b) Producing statistical reports;

(6) For use by an insurer or insurance support organization[~~,~~] or by a self-insured entity[~~,~~] or its agent, employee, or contractor, in connection with claims investigation activities, antifraud activities, rating, or underwriting;

(7) For use in providing notice to the owner of a towed or impounded vehicle **by submission of a notarized Transportation Cabinet form TC 96-16T, Request by Towing and Storage Companies and Creditors in Possession for Motor Vehicle or Board Records that include Personal Information**;

(8) For use by a licensed investigative agency or licensed security service for a purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 through 31317; or

(10) For use in connection with operation of a private toll transportation facility.

Section 5.[~~6.~~] Disclosure with Consent. Personal information referred to in Sections 1 and 4[~~2~~] of this administrative regulation shall[~~may~~] be disclosed to a[~~any~~] requestor that[~~, if the requestor~~] provides a notarized written statement of consent [~~that has been notarized,~~] from the person whose[~~who is the subject of the~~] information is[~~being~~] requested.

Section 6.[~~7.~~] A person wishing pursuant to Section 4[~~5~~] of this administrative regulation to obtain a record for a commercial purpose that[~~which~~] includes personal information, shall submit[~~complete~~] one (1) of the following forms or its preapproved electronic equivalent and three (3) dollars for each requested record:

(1) If the record is in the Driver Licensing Computer Information System,[~~:~~

~~(a)~~] Transportation Cabinet form TC 94-1E[~~94-1~~],["]Request for Driver Licensing **Record[**~~Record(s)~~**]** that[~~which~~] Includes Personal Information["]; or

[~~(b) Transportation Cabinet form TC 10-300, "Agreement Relating to Driver Licensing, Motor Vehicle or Boat Records"; or~~]

(2) If the record is in the Automated Vehicle Information System,[~~:~~

~~(a)~~] Transportation Cabinet form TC 9ZX6-16A[~~96-16~~], ["]Request for Motor Vehicle or Boat Record that[~~which~~] Includes Personal Information.["~~; or~~

~~(b) Transportation Cabinet form TC 10-300, "Agreement Relating to Driver Licensing, Motor Vehicle or Boat Records".~~]

Section 7.[~~8.~~] Retention of Records. A form completed pursuant to Section 6[~~7~~] of this administrative regulation shall be retained by the agency or office providing the record containing personal information for a minimum of two (2) years.

Section 8.[~~9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~Transportation Cabinet form TC 94-1~~] "Request for Driver Licensing Record that[~~Record(s) which~~] Includes Personal Information", TC Form 94-1E, January 2010 [~~effective July 1998~~];

(b) [~~Transportation Cabinet form TC 96-16~~] "Request for Motor Vehicle or Boat Record that[~~which~~] Includes Personal Information", TC Form 96-16A, April 2010**;**

(c) "Request by Towing and Storage Companies and Creditors in Possession for Motor Vehicle or Boat Records that Include Personal Information", TC 96-16T, March 2010; and

(d) "Request for Motor Vehicle or Boat Record that Includes Personal Information to be Completed by a Governmental Agency", TC 96-16G, March 2010[~~effective July 1998; and~~

~~(c) Transportation Cabinet form TC 10-300, "Agreement Relating to Driver Licensing, Motor Vehicle or Boat Records" effective July 2000~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Registration, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30p.m. [~~from the following offices within the Transportation Cabinet, Monday through Friday, 8 a.m. to 4:30 p.m.:~~

~~(a) TC 96-16 from the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 501 High Street, Frankfort, Kentucky 40622;~~

~~(b) TC 94- 1 from the Department of Vehicle Regulation, Division of Driver Licensing, 501 High Street, Frankfort, Kentucky 40622; and~~

~~(c) TC 10-300 from the Department of Administrative Services, 501 High Street, Frankfort, Kentucky 40622.~~]

MIKE HANCOCK, Acting Secretary
APPROVED BY AGENCY: May 6, 2010
FILED WITH LRC: May 12, 2010 at 1 p.m.
CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at EAARS, May 14, 2010)

703 KAR 5:060. Interim assessment and accountability process [~~model~~].

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 [~~158.6455~~] requires the Kentucky Board of Education to promulgate an administrative regulation to provide for an interim assessment process that ensures all student assessments, data collection, and reporting necessary for compliance with the federal accountability and proficiency requirements under No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., or its successor. This administrative regulation establishes procedures for the interim assessment process for 2008-2009, 2009-2010, and 2010-2011. [~~establish a formula for school accountability and a school improvement goal for each school for the 2006-2007 and 2007-2008 school years. This administrative regulation establishes procedures for determining successful schools, school rewards, and classifications of schools applied as school performance judgments.~~]

Section 1. Student Assessments. (1) Criterion-referenced tests developed to measure Kentucky-specific standards and meet the requirements of federal accountability shall be administered in:
(a) Reading at grades 3 through 8 and 10;
(b) Mathematics at grades 3 through 8 and 11;
(c) Science at grades 4, 7, and 11;
(d) Social studies at grades 5, 8, and 11; and
(e) Writing on demand at grades 5, 8, and 12.
(2) Norm-referenced test shall be administered in reading and mathematics in grades 3 through 7 during the 2009-2010 and 2010-2011 academic years.
(3) Readiness examinations shall be administered for high school in grade 8; for college in grade 10, and the ACT examination in grade 11.
(4) Alternate assessments for students with the most severe disabilities shall be administered to students eligible to participate with an alternate assessment.
(5)(a) A test window for each interim period assessment shall be established by the Kentucky Department of Education annually.
(b) Schools shall develop a testing schedule within the state-established testing window that ensures that the criterion-referenced test is administered in six (6) days during 2009-2010 and 2010-2011.
(c) Four (4) additional days may be used for makeup testing. The norm-referenced test must be administered one (1) week before or after the criterion-referenced test.
(6) Testing security and procedures are defined in 703 KAR 5:070, 5:080, and 5:160.

Section 2. Data Collection. (1) [~~Interim Accountability Model (2006-2007, 2007-2008). (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 model to establish accountability growth indices for the biennium ending in the 2007-2008 school year. Accepted statistical practices shall be applied.~~

~~(2) A school's adjusted accountability index for the biennium ending with the 2007-2008 school year shall be compared to its goal line reported in 2006-2007. If a school's 2006-2008 biennium index equals or exceeds its 2006-2008 goal lines, the school shall be eligible to receive a reward if the school meets the dropout and novice criteria under KRS 158.6455.~~

~~(3) If a school's accountability index falls below its assistance line reported in 2006-2007, a school shall be subject to the provisions of KRS 158.6455 and 703 KAR 5:120.~~

~~(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. Nonacademic Index Calculations. The values for attendance rate, 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:
(a)[~~(1)~~] Attendance rates, primary through grade twelve (12) as collected in the Superintendent's Annual Attendance Report (SAAR);
(b)[~~(2)~~] Retention rates, grades 4 through 8 as collected in the state Nonacademic Data System;
(c)[~~(3)~~] Dropout rates, grades 7 through 12 as collected in the state Nonacademic Data System [~~and 8~~];
(d)[~~(4)~~] Graduation rates, grades 9 through 12 as collected in the state Nonacademic Data System; and
(e)[~~(5)~~] Successful transition to adult life for the graduating students as collected in the state Nonacademic Data System.
(2)(a) Graduation data collected for the 2009-2010 school year shall be included in the nonacademic data release in the aggregate and disaggregated by ethnicity-based student groups.
(b) The Kentucky Department of Education shall use the Averaged Freshmen Graduation Rate (AFGR) definition from the National Center for Education Statistics as the calculation.
(c) The AFGR reported in 2010-2011 shall be used to report publicly nonacademic data and to make Adequate Yearly Progress determinations as defined by No Child Left Behind.
(d) At the school and district levels, the definition of AFGR shall use the membership of grades 9 and 10 from the Growth Factor Report as the average class size.
(e) The aggregate average class size with AFGR shall require a minimum of ten (10) in a student population as sufficient size for reporting.
(f) To meet the AFGR requirement in 2010-2011, schools and districts must attain:
1. A graduation rate that is equal to or greater than the annual 2010-2011 reporting goal of 82.32 percent; or
2. A graduation rate that closes the gap between the previous year's graduation rate of a school or district and the graduation rate goal of ninety (90) percent by at least ten (10) percent per year.
(3)(a) KDE shall generate and report with the nonacademic data release an adjusted graduation rate for Kentucky that includes standard diploma graduates completing in more than four (4) years and students with severe disabilities that earn a certificate of attainment.
(b) The adjusted graduation rate shall be for local district use and shall not be used in federal accountability.

Section 3. Reporting. (1) Results from all state-required assessments shall be reported publicly after the completion of data quality control processes.
(2) [~~Alternate Assessments.~~] Scores from alternate assessments shall be included in reporting [~~the academic indices~~] so that the data from an alternate assessment completed by a student eligible to participate with an alternate assessment are included in the same manner as [~~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.
(3)(a) Annual determinations of Adequate Yearly Progress (AYP) shall be made for federal reporting under No Child Left Behind, 20 U.S.C. 6301 et seq.
(b) Annual AYP status for schools and districts shall identify

Title 1 schools and districts for federal school improvement and non-Title 1 schools and districts as eligible for state assistance.

(c) During the interim assessment process, the following calculations shall be used in generating AYP reports.

1.a. To meet the other academic indicator at elementary and middle school levels, schools and districts shall demonstrate improvement on the state-required assessments for science, social studies, and writing on demand.

b. Improvement shall be defined as an increase in the current year aggregate percentage of students scoring proficient and above compared to the prior year or performance at or above the state aggregate percentage or a decrease in the aggregate percentage of students scoring at the Novice level for all five (5) state-required content areas combined.

c. The calculation shall apply the confidence interval used with the reporting of reading and mathematics in No Child Left Behind Adequate Yearly Progress determinations.

d. Students included in the calculation for other academic indicator at elementary and middle schools shall be those students enrolled for any 100 instructional days of the current school year being reported.

2. For the calculation of safe harbor for schools or districts that have not met the reading or mathematics annual measurable objective, the performance of total students or subpopulations not meeting the annual measurable objective shall be improved by reducing the percentage of students scoring below proficient by ten (10) percent.

(4)(a) A data review window shall be available to schools and school districts for fourteen (14) days following the official release of Annual Yearly Progress determinations to the public.

(b) Schools and districts shall submit a request for a data review with a Web-based application provided and directed by the Department of Education.

(c) The submitted request shall outline specific data changes needed and provide supporting documentation and evidence for the changes.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) If a school does not have grades end of primary/3, 4 and 5 at the elementary level, grades 6, 7 and 8 at the middle school level, or grades 9, 10, 11, and 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) A school or school district may request a waiver from the standard 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 reading and mathematics assessments.

(b) A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the year for which the waiver is requested.

(c) A condition for the granting of a waiver shall be that each affected school and school district shall not use the school configuration for which it sought a waiver as a basis of a subsequent data review.

Section 5. Schools Having More than One (1) Federal Accountability Level. If a school has more than one (1) federal accountability level, the school's data [~~accountability index~~] shall be the aggregated average of [~~the academic and nonacademic~~] data for the school.

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).

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: March 15, 2010

FILED WITH LRC: March 15, 2010 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, July 13, 2010)

781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.

RELATES TO: KRS **151B.185,** 151B.190, **151B.200, 34 C.F.R. 361.42, 361.49,** 29 U.S.C. 722, 723

STATUTORY AUTHORITY: KRS **[**~~151B.185,~~**]**151B.195**(1)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 accepts and agrees to comply with federal **acts relating to vocational rehabilitation when these acts apply to joint state and federally funded vocational rehabilitation programs[**~~vocational rehabilitation acts, provides for a state rehabilitation agency and sets eligibility criteria for vocational rehabilitation services~~**]**. KRS 151B.195**(1) requires the executive director of the[**~~requires the Executive Director,~~**]** Office of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the **State Vocational Rehabilitation Agency[**~~state rehabilitation agency~~**]**. This administrative regulation establishes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Eligible individual" means an individual with a disability who has been determined by **the office[**~~an appropriate office staff member~~**]** to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(3)**[**~~"Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less.~~

~~(4)~~**]** "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(4)[~~(5)~~**]** "Office" means the Office of Vocational Rehabilitation and its**[**~~appropriate~~**]** staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5)[~~(6)~~**]** "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

(a) Spouse;
(b) Parent;
(c) Grandparent;
(d) Brother;
(e) Sister;
(f) Son;
(g) Daughter;
(h) Grandchild;
(i) Aunt;
(j) Uncle;
(k) Niece;
(l) Nephew; and
(m) First cousin.

(6)[~~(7)~~**]**"Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.

Section 2. Employees' **Request[**~~Application~~**]** for Services. (1) An employee **of the office** who wishes to **request[**~~apply for~~**]** rehabilitation services shall advise the Director of Program Services or a designee.

(2) The Director of Program Services or a designee and the employee shall select a counselor to take the **request for services[**~~application~~**]**. If practicable, the counselor shall be located in an

adjacent district to the district in which the employee resides.

Section 3. Employees' Relatives' **Request[**~~Applications~~**]** for Services.

(1) An employee of the office shall not take a request for services[~~An employee shall not take an application~~**]** or provide vocational rehabilitation services to a relative.

(2) The relative shall be referred to the Director of Program Services or a designee.

(3) The Director of Program Services or a designee and the individual shall identify a staff member who is not a relative to take the **request for services[**~~application~~**]** and to provide services as deemed appropriate.

Section 4. Legal Fees. The office shall not be responsible for any fees incurred by an applicant or eligible individual for legal services.

Section 5. Payment Rates for Purchased Services. (1) A service vendor shall not charge or accept from the applicant, eligible individual or a relative payment for services unless the amount of the charge or payment is **first presented to[**~~previously known to and approved by~~**]** the office.

(2) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services shall be provided.

Section 6. Potentially Terminal Illness. Services shall not be provided to individuals with a potentially terminal illness unless:

(1) There is a favorable medical prognosis for recovery; or

(2) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, **the office[**~~staff~~**]** shall request a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions. **(1)** The office may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services.

(2) If the office determines that eligibility is not met or does not authorize services, an individual may utilize the appeals process established in 782 KAR 1:010.

Section 8. Self-employment Enterprises. The requirements established in this section shall be met prior to planning for self-employment for an eligible individual.

(1) An eligible individual shall undergo **an[**~~appropriate~~**]** assessment to determine work potential, including mental and physical abilities, and interests, aptitudes, personality traits and other pertinent characteristics **as prescribed by the office**.

(2) An eligible individual shall participate in prevocational and small business training **as prescribed by the office**.

(3) An eligible individual shall obtain any required license, permit, certificate, or lease, and be in conformity with all federal and state laws and local ordinances to commence an enterprise.

(4) An eligible individual seeking to develop a self employment enterprise requiring start up costs of more than $1,000 shall:

(a) Complete a feasibility study; and

(b) Submit a business plan and have it approved by the office prior to provision of services. **The business plan shall consist of the following:**

1. Executive summary;

2. Description of product or service;

3. Assessment of available consumers to be served;

4. Competitors currently in operation in the industry;

5. Marketing plan;

6. Costs of production;

7. Management details and structure; and

8. Detailed financial analysis.

(5) The office shall not be the sole source of capitalization for a self-employment enterprise with start up costs of $5,000 or more.

(a) In addition to requirements under subsection (4), an eligible individual seeking financial assistance with start up costs of $5000 to $10,000 shall contribute fifty (50) percent of the cost in excess of $5,000 either in capital or documented in kind resources and ninety (95) percent of the cost in excess of $10,000.

(b) An eligible individual shall provide documentation that the assets necessary for the required financial participation are in place prior to provision of services by the office.

(6) The total office expenditures toward the start up costs for a self employment enterprise shall not exceed $10,000 **unless[**~~.The Director of Program Services or designee may make an exception if~~**]**:

(a) All provisions of subsections (1) through (5) **of this section** are met; and

(b)1. The nature of the individual's vocational rehabilitation needs make it necessary that the service be provided;**[**~~or~~**]**

2. The denial of the service will prohibit the individual from achieving the vocational goal; or

3. The provision of the service will result in a cost savings to the office.

Section 9. Sex Change. Office funds shall not be used to pay for sex change surgery.

Section 10. Tools and Equipment. The eligible individual shall return tools, equipment, and supplies to the office when no longer used for the employment outcome.

Section 11. Training. Postsecondary training shall be provided for an eligible individual pursuant to this section.

(1) Except as provided in subsections **(3) and (4)[**~~(2) or (3)~~**]** of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(2) The Director of Program Services or a designee may make exceptions **to the limitations provided by subsection (1)** if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as defined in 34 C.F.R. 361.5(b)(16).

(3)[~~(2)~~**]** The office shall provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services **including:**

(a) Interpreting services;

(b) Note-taking services; and

(c) Tutoring services.[~~(e.g., interpreting services, note-taking services, tutoring services).~~**]**

(4)[~~(3)~~**]** Other **[**~~office approved~~**]** postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services shall be used if the total cost of attendance does not exceed the total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(5)[~~(4)~~**]** Training shall be purchased only from training facilities that are accredited or licensed by**[**~~appropriate~~**]** accrediting or licensing bodies and which comply with all applicable state and federal requirements.

(6)[~~(5)~~**]** Training shall be provided only to attain entry level of the employment outcome.

(7)[~~(6)~~**]** An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.

Section 12. Computer Hardware and Software Purchases. (1) Except as provided in subsection (2) of this section or in Section 13 of this administrative regulation, the office shall not purchase a computer, microcomputer, other hardware or software for the personal use of an applicant or eligible individual.

(2) The office shall consider the provision or upgrade or replacement of computer hardware and software if:

(a)1. The equipment is essential to compensate for the limita-

tions caused by the disability; or

2. The equipment is required for the eligible individual to achieve or maintain a vocational objective of competitive employment; and

(b) One (1)**[**~~or more~~**]** of the following criteria are met:

1. The equipment is required for vocational preparation;

2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or

3. The equipment enables an eligible individual to become competitive with nondisabled employees performing the same duties.

Section 13. Second Time Upgrades or Replacements. (1) Except as provided in subsection (2) of this section, the office shall not provide more than one (1) computer upgrade or replacement per individual.

(2) The office shall approve a second time upgrade or replacement if:

(a) The eligible individual has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.

Section 14. Transplants or Implants. A transplant or implant procedure which is experimental or which does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office.

Section 15. Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.

Section 16. Visual Impairments. An eligible individual with a secondary disability of visual impairment shall be served if another impairment, other than visual, results in a more substantial impediment to employment.

BETH SMITH, Executive Director

APPROVED BY AGENCY: April 15, 2010

FILED WITH LRC: April 15, 2010 at 11 a.m.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, July 13, 2010)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, **361.53,** 361.54, 29 U.S.C. 721(a)(5), (15), (21)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195**(1)** requires the Executive Director **of the[**~~,~~**]** Office of Vocational Rehabilitation**[**~~,~~**]** to promulgate administrative regulations governing the services**, personnel,** and administration of the **State** **[**~~Office of~~**]** Vocational Rehabilitation **Agency**. 34 C.F.R. 361.36**(c)[**~~(b)~~**]** requires the office to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 C.F.R. 361.36(d) **establishes** **[**~~established~~**]** federal guidelines for the imposition of an order of selection. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Eligible individual" means an individual who has been determined by **the office** **[**~~an appropriate state unit staff member~~**]** to meet the basic conditions of eligibility for vocational rehabilitation services.

(2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.

(3) "Individual with a most significant disability" means an individual who has a significant disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities **[**~~(such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills)~~**]** in terms of an employment outcome.

(4) **"Functional capacity" means the capacity to perform tasks required in employment including:**

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Self-direction;

(e) Interpersonal skills;

(f) Work tolerance; or

(g) Work skills.

(5) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement. **[**~~(5) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that:~~

~~(a) Is unlikely to be corrected through surgical intervention or medical treatment; and~~

~~(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration service.~~**]**

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The executive director shall exempt services from the economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 C.F.R. 361.53.

(3) An economic needs test **as established in subsection (5) of this section** shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Tuition and registration fees for vocational or college training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;

(g) Postemployment services except as provided in subsection (4)(a)-(m) of this section;

(h) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes [~~or~~];

(i) Initial vehicle and property modifications in excess of $10,000;

(j) Second or subsequent vehicle modifications regardless of cost; or

(k) Vehicle modification repair or upgrades.

(4) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance;

(c) Placement;

(d) Services provided by staff at state-owned and operated

rehabilitation facilities;

(e) Rehabilitation technology **[**~~(~~**]**except as **specifically** provided in subsection (3) of this section**[**~~)~~**]**;

(f) Communication assistance in the individual's native language;

(g) Books, supplies, tools or equipment for vocational or other training;

(h) Supported employment;

(i) Interpreter services for the deaf;

(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note takers, or assistive technology education aids; or

(m) Other training, including driver training, on-the-job training, job coaching, job development, or **job** training.

(5) The office's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 C.F.R. 361.54.

Section 3. Order of Selection. If the executive director determines that the office shall be unable to provide services to all eligible applicants, the office shall implement the order of selection.

(1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the office implements an order of selection.

(2) The order of selection shall not regulate the provision of information or referral services.

(3) On implementation of the order of selection, the office shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6)**(a)** An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category.

(b) If the priority category is open, the individual shall be served.

(c) If the priority category is closed, the individual's case shall be held in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection **[**~~policy~~**]** shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the office is unable to provide services to all eligible individuals with significant disabilities, the office shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection **[**~~system~~**]** shall have five (5)[~~six (6)~~] priority categories as follows:

(a) Priority I - eligible individuals with a most significant disability.

(b) Priority Category II - eligible individuals with a significant disability who have serious limitations in three (3) functional capacities.

(c) Priority Category III - eligible individuals with a significant disability who have serious limitations in two (2) functional capacities.

(d) Priority Category IV - eligible individuals with a significant disability who have serious limitations in one (1) functional capacity.

(e) Priority Category V - eligible individuals with a nonsignificant disability [~~that results in permanent functional limitations.~~

~~(f) Priority Category VI - all other eligible individuals whose disability is nonsignificant~~].

BETH SMITH, Executive Director

APPROVED BY AGENCY: April 15, 2010

FILED WITH LRC: April 15, 2010 at 11 a.m.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing
(As Amended at ARRS, July 13, 2010)

810 KAR 1:025. Licensing thoroughbred racing.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.310, 230.320**[**~~, EO 2009-535~~**]**

STATUTORY AUTHORITY: KRS 230.215(2), **230.225,** 230.240(2), 230.260(4), 230.290(2), **230.310(1)[**~~230.300(1)(h), EO 2009-535~~**]**[~~230.320~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.310(1) authorizes the **commission[**~~authority~~**]** to establish licensing requirements for participation in thoroughbred racing.**[**~~EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission.~~**]** This administrative regulation establishes [~~The function of this administrative regulation is to establish the~~] licensing procedures and requirements for participation in thoroughbred racing.

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to Be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission pursuant to KRS 230.310. License categories shall include**[**~~the following~~**]**:

(a) Racing participants and personnel including **owner, trainer, owner/trainer, assistant trainer, claiming, jockey, jockey agent, veterinarian, farrier, jockey apprentice, equine therapist, veterinary technologist or technician, veterinary assistant, mutuel clerk, occupational employee, stable employee, exercise rider, steeplechase jockey, farm manager or agent, vendor, and any employee listed in Section 5 of this administrative regulation;**[~~the following: owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, farrier, vendor, mutuel clerk, exercise rider, stable employee, and any employee listed in Section 5 of this administrative regulation;~~**]**

(b) Racing officials;

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing patrons, with job duties which require their presence anywhere on association grounds;

(d) Sole proprietors, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds;

(e) Commission employees with job duties which require their presence anywhere on association grounds; and

(f) Commission members.

(2) A person working at a licensed racing association in the Commonwealth shall obtain a valid license issued by the commission. The executive director, chief racing steward, or their designee may refuse entry or scratch any horse involving any person who, after being requested to obtain a valid license, fails or is unable to obtain a license.

(3)(a) A person required to be licensed shall submit:

1. A completed written application on the form Licensing Application, **(KHRC 25-01 (4/10))[**~~KHRA 25-01 (10/08)~~**]**, or the Multi-jurisdictional License Form pursuant to Section 7 of this administrative regulation; and

2. The fee required by Section 5 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section **17[**~~18~~**]** of this administrative regulation.

(c) A conditional license may be issued by the commission or its designee upon submission of a written application.

Section 3. General License Application Requirements for All Applicants. (1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(2)(a) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force.

(b) An application shall be submitted **no[**~~not~~**]** later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section **17[**~~18~~**]** of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his **or her** agent shall result in an immediate license suspension, revocation, refusal, or denial, or imposition of a fine by the commission or the chief racing steward.

(4)(a) An applicant for licensing shall be a minimum of sixteen (16) years of age except as provided by paragraph (b) of this subsection. An applicant may be required to submit a certified copy of his or her birth certificate or work permit.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the stewards.

(5) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall provide notice to an applicant that the license has been issued **or denied[**~~, denied, or refused~~**]**. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth **of Kentucky**.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by**:**

1. Evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth **of Kentucky; and**

2. A "Veterinarian Approval Form" (KHRC 25-04 (04/10))[~~, and KHRA Form 25-4~~**]** signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a **"Veterinarian Approval Form" (KHRC 25-04 (04/10))[**~~KHRA Form 25-4~~**]** signed by a licensed veterinarian certifying that the applicant **works for[**~~is employed by~~**]** him or her as required by KRS 321.443.

(d) Equine therapist. An application from an equine therapist not defined by KRS Chapter 321 shall be accompanied by a "Veterinarian Approval Form" (KHRC 25-04 (04/10)) signed by a licensed veterinarian and the chief state veterinarian attesting to the skill and integrity of the applicant.

(2) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a**[**~~recognized~~**]** farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.

(3) Stable employee, occupational employee, or vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a **KHRC 25-04[**~~KHRA Form 25-4~~**]** from his or her employer verifying employment and workers' compensation coverage.

(4) Special event licensees.

(a) A special event license shall be:

1. Issued to employees who are employed by an association only for the duration of a special event; and

2. Valid for the days of the event only.

(b) The duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable.

(a) $150 - trainer, owner, **owner/trainer, assistant trainer, claiming, jockey, jockey agent, veterinarian, steeplechase jockey[**~~assistant trainer, veterinarian, jockey, jockey agent, claiming license~~**]**, and temporary license;

(b) $100 - **farrier, racing official, jockey apprentice,[**~~racing secretary,~~**]** assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer,**[**~~jockey apprentice, farrier,~~**]** steward, testing laboratory employee, racing department employee, valet, and outrider;

(c) Fifty (50) dollars - **equine therapist, veterinary technician, veterinary technologist, veterinary assistant, mutuel clerk, farm manager, farm agent, and vendor;[**~~veterinary assistant, veterinary technician, veterinary technologist, vendor, mutuel employee, farm manager, and farm agent;~~**]**

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting, horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association; and

(e) Ten (10) dollars - **stable employee, including stable foreman, exercise personnel, hotwalker, groom watchman, and pony person** exercise rider, special event mutuel, special event occupational, and special event vendor employee**[**~~, stable employee, including stable foreman, exercise personnel, hotwalker, groom, watchman, and pony person~~**]**.

(2) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting. (1) If requested, a license applicant

shall furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license.

(2) If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints.

(3) The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. (1) In lieu of a license application as required by this administrative regulation, an applicant may submit an ARCI Multi-State License and Information Form or the National Racing Compact License and Information Form.

(2) It shall be accepted if the commission determines that it ensures compliance with all licensing requirements in this administrative regulation and KRS Chapter 230.

Section 8. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:

(1) Investigate the criminal background, employment history, and racing history record of the applicant;

(2) Engage in research and interviews to determine the applicant's character and qualifications; and

(3) Verify information provided by the applicant.

Section 9. Search and Seizure. (1) The commission or designee may search any location described in KRS 230.260(7).

(2) The commission or designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810 or 811**.**

(3) A licensee shall:

(a) Cooperate with the commission or designee during an investigation; and

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(4) A licensee shall consent to out-of-competition testing in accordance with 810 KAR 1:110.[~~(c) Consent to out-of-competition testing at any time or place designated by the commission.~~**]**

Section 10. Employer Responsibility. (1)(a) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation.

(b) If an employer does so, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230, or KAR Title 810 or 811.

(2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.

(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(4) The license application of an employee shall be signed by the employer.

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 11. Financial Responsibility. (1) A licensee shall maintain financial responsibility during the period for which the license is issued.

(2) A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of **any occupation for which a license is required by this administrative regulation[**~~his or her licensed occupation,~~**]** shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.

(3) If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.

(4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.

Section 12. Voluntary Withdrawal of License Application. (1) A license applicant may **with[**~~, upon~~**]** the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The stewards shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the **Association of Racing Commissioners International[**~~ARCI~~**]**.

Section 13. License Review Committee. (1) The executive director, chief racing steward, or director of licensing may refer a license application to the license review committee in lieu of denying.

(2) The license review committee shall be composed of the executive director or designee, the director of licensing or designee, the chief state steward or**[**~~his or her~~**]** designee, and at least one **(1)** other commission member or commission staff member as designated by the executive director.**[**~~(3)~~**]** At least three (3) members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section **12[**~~13~~**]** of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4)[~~(5)~~**]** The denial**[**~~or refusal~~**]** of the application **may be appealed[**~~shall be subject to appeal~~**]** in accordance with KRS Chapter 13B.

(5)[~~(6)~~**]** In the alternative, the commission, the license review committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 14. License Denial, Revocation, or Suspension. (1) The commission, executive director, chief racing steward, or director of licensing may**[**~~refuse or~~**]** deny a license application, and the commission or chief state steward may suspend or revoke a license, or otherwise penalize in accordance with KRS 230.320(1) a licensee, or other person participating in horse racing, for any of the following reasons:

(a) The public interest, for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering, may be adversely affected if the license is issued;

(b) The licensee or applicant has any felony or misdemeanor **criminal** conviction from any jurisdiction, including having entered into any form of diversionary program, within fifteen (15) years preceding the date of submission of a license application;

(c) The licensee or applicant has pending criminal charges or is criminally charged during the license period in any jurisdiction;

(d) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked;

(e) The licensee or applicant has had a license issued by the Commonwealth revoked, suspended, or denied;

(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been ejected, ruled off, or excluded from racing association grounds in the Commonwealth **of Kentucky** or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the prearrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards;

(l) The licensee or applicant has demonstrated financial irresponsibility **as described by Section 11 of this administrative regulation;[**~~by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid;~~**]**

(m) The licensee or applicant has **knowingly** failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of **a thoroughbred[**~~thoroughbreds~~**]**;

(o) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the stewards;

(p) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(q) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;

(r) The licensee or applicant has **knowingly** entered, or aided and abetted the entry, of a horse ineligible or unqualified for the race entered;

(s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward **any[**~~:~~

~~1. A firearm; or~~

~~2. Any other~~**]** appliance or device, other than an ordinary whip, which could be
used to alter the speed of a horse in a race or workout;

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions**[**~~outlined~~**]** in KRS Chapter 230 or 810 KAR 1:060;

(u) The licensee or applicant has failed to comply with a written order or ruling of the commission, the stewards, or the judges pertaining to a racing matter or investigation;

(v) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(w) The licensee or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(x) The licensee or applicant has participated in or engaged in any conduct of a disorderly nature on association grounds which includes, but is not limited to:

1. Failure to obey the stewards' or other officials orders that are expressly authorized by the administrative regulations of the commission;

2. Failure to race when programmed unless excused by the stewards;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

6. Smoking on the track in colors during actual racing hours;

7. Warming up a horse prior to racing without colors; and

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered with a commission member, employee or agent, or racing official, while these persons are in the course of discharging their duties;

(z) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(aa) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(bb) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(cc) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with Kentucky statutes or administrative regulations;

(dd) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the chief state racing steward;

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 16 of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section 17 of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section 20 of this administrative regulation;

(hh) The licensee or applicant has **knowingly** aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;

(ii) The licensee or applicant has hired an unlicensed person required by KRS 230.300, 230.310, or this administrative regulation to be licensed;

(jj) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 810 KAR 1:018, Section 3(5); or

2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by a statute or administrative regulation of the commission; or

(kk) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS 230.320 and Chapter 13B.

Section. 15. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction, the commission may require reinstatement at that track before a license is granted by the commission.

Section. 16. Changes in Application Information. (1) The licensee or applicant shall report changes in any information required for licensing in writing to the commission.**[**~~;~~**]**

(2) Any change in information required for licensing shall be submitted in writing upon the "Change in **Application[**~~License~~**]** Information Form", KHRC 25-03 (01/10), signed by the licensee, and filed at the commission central office, within thirty (30) days of the change, unless it is information listed in subsection (3) **of[**~~for~~**]** this section.

(3) The licensee shall report changes in information in writing within 72 hours of the occurrence for these items:

(a) Criminal charges;

(b) Criminal convictions;

(c) License denials and license suspensions of ten (10) days or more;

(d) License revocations or fines of $500 or more in other jurisdictions;

(e) Racing related disciplinary charges pending in other jurisdictions; and

(f) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

Section 17. Temporary Licenses. (1)(a) Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "**[**~~Application for a~~**]**Temporary Owner's License **Application**", **(**KHRC 25-02 (01/10)**)**, on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, Social Security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing procedures, the applicant shall pay an additional licensing fee.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

(3) A temporary license shall not be valid for claiming.

Section 18. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except **if[**~~as~~**]** prohibited by Section 19 of this administrative regulation due to a potential conflict of interest.

Section 19. Conflict of Interest. (1) The license review committee and the chief state steward or designees shall deny or refuse to process the license of a person, and the commission or the chief state steward shall revoke or suspend a licensee, who is determined to have a conflict of interest. A conflict of interest may exist if a spouse, immediate family member, or other person in a similar relationship to the licensee or applicant holds a license which the license review committee or chief state steward **finds[**~~find~~**]** to be a conflict of interest with the licensee's or applicant's. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, or has any financial interest in a horse entered in a race, shall not **participate[**~~be employed or licensed~~**]** in that race as any of the following:

(a) Racing official;

(b) Assistant starter;

(c) Practicing veterinarian for any horse other than the owner's;

(d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;

(e) Officer or managing employee;

(f) Track maintenance supervisor or employee;

(g) Outrider;

(h) Race track security employee;

(i) Farrier;

(j) Photo finish operator;

(k) Horsemen's bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey; or

(p) Jockey agent.

(4) More than one (1) license to participate in racing may be granted to a person except if prohibited by this administrative regulation due to a potential conflict of interest.

Section 20. License Photo Identification Badges. (1)(a) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge).

(b) A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The stewards or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards, the commission director of **enforcement[**~~security~~**]**, or director of licensing, or designee, upon request.

Section 21. Duties of Licensees. (1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.

(2) A licensee shall report to track security or the stewards any knowledge the licensee has that a violation of **this administrative regulation[**~~these rules~~**]** has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the stewards and the commission, and all decisions by the stewards and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:

(a) Findings of fact as occurred during an incident to the running of a race; and

(b) A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(5) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.

(6) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of the administrative regulations of the commission, or any wrongdoings by any person, and shall cooperate in any subsequent investigation.

Section 22. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Licensing Application", **(**KHRC 25-01, **(7/10))[**~~(3/10)~~**])**;

(b) "**[**~~Application for a~~**]**Temporary Owner's License **Application**", **(**KHRC 25-02 (1/10)**)**;

(c) "Change in Application Information Form", **(**KHRC 25-03 (1/10)**)**; and

(d) "Veterinarian **Approval[**~~Authorization~~**]** Form", **(**KHRC 25-04 (**4/10[**~~1/10~~**]))**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at www.khrc.ky.gov.

[~~(1) Information provided on or with license application shall be complete and correct.~~

~~(2) A licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless reversed or modified by the commission upon proper appeal.~~

~~(a) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:~~

~~1. Findings of fact as occurred during and incident to the running of a race; and~~

~~2. A determination of the extent of disqualification of horses in a race for fouls committed during the race.~~

~~(b) Excepted rulings and decisions by the stewards shall be~~

~~final with no right of review by the commission.~~

~~(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.~~

~~(b) Licensee shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation.~~

~~(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.~~

~~(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.~~

~~(b) Upon a finding of a positive test result for a prohibited medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall be held responsible for the test results unless the trainer can establish that the stimulant, sedative, depressant, local anesthetic, or any foreign substance was administered to the horse by another person.~~

~~Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.~~

~~Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order other disciplinary measures, on the following grounds:~~

~~(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;~~

~~(2) Conviction of a crime or violation of any statute or administrative regulation;~~

~~(3) Falsification, misrepresentation, or omission of required information in a license application to the commission.~~

~~(a) Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or~~

~~(b) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;~~

~~(4) Making false or misleading statements to the commission or the stewards in an application for a license or in the course of an investigation;~~

~~(5) Failure to comply with any order or ruling of the commission, stewards, or racing official;~~

~~(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in these activities;~~

~~(7) Applying for an receiving a license by a person less than sixteen (16) years of age;~~

~~(8) Being incompetent or unqualified in the performance of the activity for which the license is granted as determined by standard examinations prescribed by the stewards;~~

~~(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;~~

~~(10) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;~~

~~(11) Discontinuance of or ineligibility for activity for which license was issued;~~

~~(12) Possession on association grounds, without written permission from the commission or stewards, of:~~

~~(a) Firearms;~~

~~(b) Battery, buzzer, or electrical device; or~~

~~(c) Other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;~~

~~(13) Possession on association grounds by a person other than a licensed veterinarian of:~~

~~(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or~~

~~(b) Medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission;~~

~~(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while these persons are in the discharge of their duties;~~

~~(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;~~

~~(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;~~

~~(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;~~

~~(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;~~

~~(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized; or~~

~~(20) Aiding or abetting any person in violation of any administrative regulation of the commission.~~

~~(21) A licensee's failure to satisfy a judgment rendered against him, for goods, supplies, services or fees furnished him and used in the course of his licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. Lack of a showing of legal and just cause for not satisfying said judgment is inconsistent with the best interests of racing and the maintenance of honesty, integrity and high quality thereof and is cause for suspension of the license and denial of any renewal of same.~~

~~Section 4. License Applications for Associations. Persons or legal entities desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:~~

~~(1) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;~~

~~(2) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;~~

~~(3) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with the degree of ownership or type of interest pertaining to the ownership or interest;~~

~~(4) Names of racing officials and persons responsible for track security and fire protection;~~

~~(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;~~

~~(6) An operating report on forms prescribed by the commission if the applicant is currently licensed.~~

~~Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.~~

~~(b)The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the associa-~~

~~tion on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.~~

~~(2) An application from a person not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.~~

~~(3) An application from a person whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.~~

~~(4)(a) An application from a person, corporation, partnership, lessor, or other entity involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.~~

~~(b) An application shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made.~~

~~(5)(a) An application from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.~~

~~(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.~~

~~(6) An application from a person desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.~~

~~(7) An application from a person not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.~~

~~(8) The following annual fees shall accompany the application and shall not be refundable:~~

~~(a) $100 - owner, trainer, assistant trainer, veterinarian, farrier, apprentice farrier, jockey, jockey agent, racing official, steward, testing laboratory employee; racing department employee, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license;~~

~~(b) Seventy-five (75) dollars - jockey apprentice;~~

~~(c) Fifty (50) dollars - veterinarian assistant, dental technician, stable-area supplier license (for suppliers of horse feed, tack, medication, or food vendors), mutuel employee, farm manager, farm agent;~~

~~(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, photo finish operator, film patrol, television production employees, association security department including policemen, watchmen, firemen, ambulance drivers, emergency medical technicians, track superintendent, maintenance department staff, admissions department manager and employees, association concessions manager and employees, parking manager, and employees, all other persons employed by the association;~~

~~(e) Ten (10) dollars - special event mutuel employee license.~~

~~1. Stable foreman, exercise personnel, hotwalker, groom, watchman, pony person; and~~

~~2. Special event mutuel employee license which shall be valid for the day of the event only.~~

~~(9) The fee for a duplicate license shall be ten (10) dollars.~~

~~Section 6. Licensing Committee. (1) The commission may appoint a licensing committee which may include the executive director and commission steward or their designated representative.~~

~~(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to security checks, for final action.~~

~~(3) The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which a license application was made pending administrative processing and final action on license application by the commission.~~

~~Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.~~

~~Section 8. Possession of License Required. A person required to be licensed by this administrative regulation shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. Licenses specified under Section 5(8)(a), (b), (c), (d), and (e) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times. An owner shall not be required to have a color photograph included on his or her license.~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Licensing Application" (KRC-15(10/02));~~

~~(b) "Race Track License Application", (KRC-16 (12/01)); and~~

~~(c) "Corporate Disclosure Form", (KRC-17 (12/01)).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

ROBERT M. BECK, JR., Chairman
LARRY BOND, Deputy Secretary

APPROVED BY AGENCY: March 24, 2010

FILED WITH LRC: March 26, 2010 at 4 p.m.

CONTACT PERSON: Timothy A. West, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 13, 2010)

810 KAR 1:037. Licensing of racing associations <u>conducting thoroughbred racing</u>.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320**[**~~, EO 2009-535~~**]**

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300**[**~~, EO 2009-535~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings**[**~~EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission.~~**]** This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

(2) "Principals" is defined by KRS 230.210(17).

(3) "Publicly traded corporation" means a corporation that**:**

(a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;

(b) Issues securities subject to Section 15(d) of the 1934 Act;

(c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or

(d) Is required to file under the 1934 Act.[~~has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.~~**]**

(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".

(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.

(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $10,000.

(b) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.

(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.

(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit, along with the license application, a cashier's check or certified check payable to the commission in the amount of $5,000. This fee shall be nonrefundable.

(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:

(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;

(b) The applicant meets all of the requirements of this administrative regulation;

(c) The applicant is qualified and financially capable to operate a race track;

(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;

(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and

(f) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes**;[**~~.~~**]**

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals**;**

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations**;[**~~.~~**]**

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky**;[**~~.~~**]**

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the **license[**~~licensee~~**]** unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless **the[**~~such~~**]** transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility**.[**~~(~~**]**whether a final or conditional license in accordance with KRS 230.290**.[**~~)~~**]** without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed $15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

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

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, **7/10[**~~3/10~~**]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at www.khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Authority
(As Amended at ARRS, July 13, 2010)

810 KAR 1:100. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330**[**~~, EO 2009-535~~**]**

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5)**[**~~, EO 2009-535~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing **Commission[**~~Authority~~**]** with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth.**[**~~EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission.~~**]** KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied,

suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed **an[**~~and~~**]** administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to **that[**~~such a~~**]** determination. This emergency administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) The applicant appears at the KRS Chapter 13B hearing but fails, without good cause, to offer evidence at the hearing to support his application for review; or

(3) The appeal is totally lacking in merit such**[**~~that~~**]** that it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Authority
(As Amended at ARRS, July 13, 2010)

811 KAR 1:230. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330**[**~~, EO 2009-535~~**]**

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5)**[**~~, EO 2009-535~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing **Commission** **[**~~Authority~~**]** with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. **[**~~EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission.~~**]** KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed **an[**~~and~~**]** administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to **that [**~~such a~~**]** determination. This administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) The applicant appears at the KRS Chapter 13B hearing, but fails, without good cause, to offer evidence at the hearing to support his application for review; or

(3) The appeal is totally lacking in merit such that **[**~~that~~**]** it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 13, 2010)

811 KAR 1:037. Licensing of racing associations conducting standard bred racing.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.320**[**~~, EO 2009-535~~**]**

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300**[**~~, EO 2009-535~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300 authorizes the Kentucky Horse Racing Commission to issue licenses to conduct race meetings. **[**~~EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the Kentucky Horse Racing Authority to the commission.~~**]** This administrative regulation establishes the licensing application procedures and requirements for conducting horse racing meetings in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

(2) "Principals" is defined by KRS 230.210(17).

(3) "Publicly traded corporation" means a corporation that**:**

(a) Has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;

(b) Issues securities subject to Section 15(d) of the 1934 Act;

(c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or

(d) Is required to file under the 1934 Act. **[**~~has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.~~**]**

(4) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, or entity holding a license.

Section 2. License Applications for Associations. (1) New license applications. A person or legal entity desiring to conduct standardbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal

Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering".

(4) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.300(9), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants.

(a) As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $10,000.

(b) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial license application or within twenty (20) days of the granting of the license.

(c) To the extent additional costs are incurred, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request.

(d) Failure to submit an additional requested payment shall result in suspension of the investigation or suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for an initial license shall also pay a licensing fee. The applicant shall submit along with the license application a cashier's check or certified check payable to the commission in the amount of $5,000. This fee shall be nonrefundable.

(3) Renewal applications. The commission shall not charge costs or fees for the renewal of racing association licenses.

Section 4. Licensing Criteria. (1) The commission shall issue a license if the commission determines that, on the basis of all the facts before it:

(a) The applicant meets all of the requirements under KRS Chapter 230, including KRS 230.280 and 230.300;

(b) The applicant meets all of the requirements of this administrative regulation;

(c) The applicant is qualified and financially capable to operate a race track;

(d) Racing meetings at the race track will be operated in accordance with KRS Chapter 230 and 810 KAR Chapter 1;

(e) Racing will be conducted by the applicant in accordance with the highest standards and the greatest level of integrity; and

(f) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes**;**[~~,~~]

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals**;**

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations**;**[~~,~~]

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky**;**[~~,~~]

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;

3. Social impact; and

4. Cost of public improvements;

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and

2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to initial and renewal license applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks. Factors to be considered shall include the following:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and 810 KAR Chapter 1;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Oral Presentation by Applicant. (1) An applicant for a license may make an oral presentation of its application to the commission prior to the ruling on the application.

(a) The presentation shall be made by an applicant during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) The commission may require an applicant to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

(3) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 7. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue a license, including:

(a) Copies of any documents used by the applicant in preparing the application; and

(b) Contracts between the applicant and third parties related to operations.

(2) The request may be made before or after the oral presentation.

Section 8. Transfers of Licenses. (1) A license issued under KRS 230.300 and this administrative regulation is neither transferable nor assignable and is only applicable to the location for which the license is issued.

(2) A substantial change in ownership in a licensee shall result in termination of the **license** **[**~~licensee~~**]** unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Kentucky Horse Racing Commission Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership shall be based.

(4) For purposes of subsection (3), notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless **the** **[**~~such~~**]** transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Material Modification, Expansion or Reduction of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility (whether a final or conditional license in accordance with KRS 230.290 without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Delay in Completion of Racing Facility. (1) Except as provided by subsection (3) of this section, a licensee may be subject to a late fee not to exceed $15,000 a day for every day the licensee fails to conduct racing after the commencement date specified in the license.

(2) The amount of the fee shall be determined based on the economic impact caused by the licensee's failure to perform.

(3) The late fee required by subsection (1) of this section shall not be imposed for any particular day if the licensee can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors, such as:

(a) Acts of God or enemies of the United States;

(b) Acts of government in either its sovereign or contractual capacity;

(c) Fires;

(d) Floods;

(e) Epidemics;

(f) Quarantine restrictions;

(g) Strikes;

(h) Freight embargoes; and

(i) Unusually severe weather.

(3) If the cause of delay is the default of a contractor or subcontractor, and if the licensee proves to the satisfaction of the commission that the default arose out of causes beyond the control of the licensee, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time for the licensee to meet the completion date.

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

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 37-01, 3/10; and

(b) "Kentucky Horse Racing Commission Change of Control Form", KHRC 37-02, **7/10** **[**~~3/10~~**]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 13, 2010)

811 KAR 2:130. Frivolous appeals.

RELATES TO: KRS 230.215, 230.225(7), 230.310(2), 230.320, 230.330**[**~~, EO 2009-535~~**]**

STATUTORY AUTHORITY: KRS 230.215(2), 230.320(5)**[**~~, EO 2009-535~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing **Commission** **[**~~Authority~~**]** with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. **[**~~EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all functions of the authority to the commission.~~**]** KRS 230.320(1) allows the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant any person whose license is denied, suspended, or revoked or who is assessed **an** **[**~~and~~**]** administrative fine or required to return a purse, the right to appeal the decision and to have an administrative hearing conducted in accordance with KRS Chapter 13B. KRS 230.320(5) allows the commission to determine that certain appeals are frivolous and requires it to, by administrative regulation, prescribe the conditions or factors that would lead to **that** **[**~~such a~~**]** determination. This administrative regulation defines the term "frivolous" as it pertains to KRS 230.320(5).

Section 1. Frivolous Appeals. The commission may determine that an appeal is a frivolous appeal. An appeal shall be presumed to be frivolous if:

(1) The applicant applies for an appeal to the commission but fails, without good cause, to appear at the KRS Chapter 13B prehearing, if one is scheduled, or the KRS Chapter 13B hearing before the commission's hearing officer;

(2) The applicant appears at the KRS Chapter 13B hearing but fails, without good cause, to offer evidence at the hearing to support his application for review; or

(3) The appeal is totally lacking in merit such that **[**~~that~~**]** it appears to have been taken in bad faith.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 12, 2010

FILED WITH LRC: March 17, 2010 at 3 p.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at IJC on Local Government, June 23, 2010)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.160[~~, EO 2009-535~~]
STATUTORY AUTHORITY: KRS 198B.040(10), 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department office, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. KRS 58.200(2) requires newly-constructed public buildings to be equipped with twice the number of restroom facilities for use by women as is provided for use by men. [~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

Section 1. Definitions. (1) "Developed travel distance" means the length of a pathway measured along the center line of the path.
(2) "Modular" means a structure or component [~~thereof~~] that is wholly or in substantial part fabricated in an off-site [~~of-site~~] manufacturing facility for installation at the building site.

Section 2. General Requirements. (1) In a building accommodating males and females, it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted.
(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be the load [~~that~~] denoted in the Kentucky Building Code, incorporated by reference in 815 KAR 7:120.
(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless the department determines that:
(a) Separate facilities on each level or floor are unnecessary; and
(b) Toilet rooms on every other level or floor shall be sufficient.
(4) Toilet rooms for males and females shall be clearly marked.

Section 3. Toilet Floor Construction Requirements. (1) Floors in toilet rooms [~~providing facilities for use by the general public or employees~~] shall be constructed of nonabsorbent materials.
(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.
(3) If two (2) or more fixtures that receive human waste are installed, the toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 4. Facilities for Stages. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.
(2) A drinking fountain shall be provided in the stage and auditorium area.

Section 5. Theaters, Assembly Halls, and Similar Occupancies. Separate toilet rooms for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation.[~~, and as follows:~~]
(1) Water closets and urinals for males.
(a) Water closets for males shall be installed in the following proportions:
1. One (1) water closet for each 100 males;
2. Two (2) water closets for 101 to 200 males;
3. Three (3) water closets for 201 to 400 males; and
4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.
(b) Urinals for males shall be installed in the following proportions:
1. One (1) urinal for eleven (11) to 100 males;
2. Two (2) urinals for 101 to 300 males;
3. Three (3) urinals for 301 to 600 males; and
4. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.
(2) Water closets for females. Water closets for females shall be installed in the following proportions:
(a) One (1) water closet for each fifty (50) females;
(b) Two (2) water closets for fifty-one (51) to 100 females;
(c) Three (3) water closets for 101 to 150 females;
(d) Four (4) water closets for 151 to 200 females; and
(e) If over 200 females, four (4) water closets plus one (1) additional water closet for each additional 150 females or fraction thereof.
(3) Lavatories for Males or Females. Lavatories shall be installed in the following proportions:
(a) One (1) lavatory for up to 100 persons [~~males or females~~];
(b) Two (2) lavatories for 101 to 200 persons;
(c) Three (3) lavatories for 201 to 400 persons;
(d) Four (4) lavatories for 401 to 750 persons; and
(e) If over 750 persons, four (4) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof.
(4) Sinks. There shall be one (1) service sink or slop sink on each floor.
(5) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.
(6) Drinking fountain. A drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.
(7) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. Libraries, Museums, and Art Galleries. Separate toilet facilities for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation[~~, and as follows~~]:
(1) There shall be one (1) water closet and one (1) lavatory for each 100 females or fraction thereof.
(2) Except as established in subsection (7) of this section, there shall be one (1) water closet and one (1) lavatory for each 200 males or fraction thereof.
(3) There shall be:
(a) One (1) urinal for eleven (11) to 200 males;
(b) Two (2) urinals for 201 to 400 males;
(c) Three (3) urinals for 401 to 600 males; and
(d) If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.
(4) There shall be one (1) service sink or slop sink on each floor.
(5) A drinking fountain shall be provided for each 500 persons or fraction thereof.
(6) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity of [~~or~~] fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person for each fifteen (15) square feet of area.
(7) Urinals may be substituted for water closets for males if:
(a) The substituted urinals do not exceed one-third (1/3) of the required total number of water closets; and
(b) The minimum number of urinals is installed.
(8) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 7. School Buildings Not Including Higher-Education Facilities. A school building shall be in compliance with the requirements established in 702 KAR 4:170 and this section.
(1) Drinking fountains.
(a) A drinking fountain shall be provided on each floor and wing of a building.

(b) One (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.

(c)[~~(b)~~] The drinking fountains shall be equipped with:

1. A protective cowl; and

2. The orifice, which shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for up to twenty-five (25) pupils;

2. Two (2) water closets for twenty-six (26) to 100 pupils; and

3. If over 100 pupils, two (2) water closets plus one (1) additional water closet for each additional 100 pupils or fraction thereof;[~~.~~]

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for up to twenty-five (25) pupils;

2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;

3. Four (4) urinals for fifty-one (51) to 100 pupils;

4. Six (6) urinals for 101 to 200 pupils;

5. Eight (8) urinals for 201 to 300 pupils;

6. Ten (10) urinals for 301 to 400 pupils;

7. Twelve (12) urinals for 401 to 500 pupils; and

8. If over 500 pupils, twelve (12) urinals plus one (1) additional urinal for each additional fifty (50) pupils or fraction thereof in excess of 500;[~~.~~]

(c) Water closets for females shall be installed in the following proportions:

1. Two (2) water closets for up to twenty-five (25) pupils;

2. Three (3) water closets for twenty-six (26) to fifty (50) pupils;

3. Six (6) water closets for fifty-one (51) to 100 pupils;

4. Eight (8) water closets for 101 to 200 pupils;

5. Ten (10) water closets for 201 to 300 pupils;

6. Twelve (12) water closets for 301 to 400 pupils;

7. Fourteen (14) water closets for 401 to 500 pupils; and

8. If over 500 pupils, fourteen (14) water closets plus one (1) additional water closet for each additional forty (40) pupils or fraction thereof; and [~~in excess of 500.~~]

(d)1. Lavatories for male and female pupils shall be installed in the following proportions:

a. One (1) lavatory for each twenty-five (25) pupils or fraction thereof; and

b. If over fifty (50) pupils, two (2) lavatories plus one (1) additional lavatory for each additional fifty (50) pupils or fraction thereof; and [~~over fifty (50).~~]

2. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin, if provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) One (1) service sink or slop sink shall be installed on each floor of a building.

(4) If detached modular classrooms are used, sanitary facilities shall not be required, if:

(a) The entrance of the modular classroom for elementary grades through the fifth grade is within a developed travel distance not to exceed 100 feet[~~, or~~] from the accessible entrance to the main structure or an approved central modular restroom;

(b) The entrance of the modular classroom for sixth grade and above is within a developed travel distance not to exceed 200 feet, from the accessible entrance to the main structure or an approved central modular restroom;

(c) The travel path meets the accessibility requirements in the Kentucky Uniform Building Code; and

(d) There are sufficient fixtures in the main structure to serve the entire capacity of the school, including the modular classrooms.

(5) Water closets in a school building shall be of the elongated bowl type with a split open front seat.

Section 8. Schools of Higher Education and Similar Educational Facilities. (1)(a) Except as established in paragraph (b) of this subsection, in a school of higher education or a similar education facility, there shall be installed:

1. One (1) water closet for each fifty (50) males and[~~or~~] one (1) water closet for each twenty-five (25) females or fraction thereof;

2. One (1) lavatory for each fifty (50) persons [~~males or females~~] or fraction thereof;

3. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof; and

4. One (1) urinal for each fifty (50) males or fraction thereof; and[~~.~~]

(b) One (1) water closet less than the number specified in paragraph (a) of this subsection may be provided for each urinal installed except that the number of water closets in those cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(2) Water closets in a school of higher education or a similar education facility shall be of the elongated bowl type with a split open front seat.

Section 9. Public Garages and Service Stations. (1) Separate toilet rooms for males and females shall be provided with at least:

(a) A water closet and lavatory for females; and

(b) A water closet, lavatory, and urinal for males.

(2) Water closets shall be of the elongated bowl type with a split open front seat.

Section 10. Churches. (1) Sanitary facilities shall be provided in a church as follows:

(a) One (1) drinking fountain for each 400 persons or fraction thereof;

(b) One (1) water closet for each 150 females or fraction thereof;

(c) One (1) water closet for each 300 males or fraction thereof;

(d) One (1) urinal for fifty (50) to 150 males or fraction thereof;

(e) One (1) additional urinal for each additional 150 males or fraction thereof; and

(f) One (1) lavatory for each 150 persons or fraction thereof.

(2) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 11. Transient Lodging Facilities. A transient lodging facility shall be in compliance with the requirements established in 902 KAR 10:010 and this section.

(1) A hotel or motel with private rooms shall have one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each fifteen (15) females or fraction thereof;

(c) One (1) lavatory for each twenty-five (25) persons [~~males or females~~] or fraction thereof;

(d) One (1) urinal for eleven (11) to 100 males plus one (1) additional urinal for each additional fifty (50) males or fraction thereof;

(e) [~~One (1) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof;~~

~~(f)~~] One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and

(f)[~~(g)~~] One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be one (1) water closet, one (1) lavatory, and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, there shall be one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be:

(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) males or fraction thereof;

(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) females or fraction thereof;

(c) One (1) urinal for eleven (11) to 100 males and one (1) for each additional fifty (50) males or fraction thereof [~~over 100~~];

(d) One (1) lavatory for each ten (10) persons [~~males or females~~] or fraction thereof; and

(e) One (1) bathtub or shower for each ten (10) persons [~~males or females~~] or fraction thereof.

Section 12. Dormitories: School, Labor, or Institutional. [~~In a dormitory, there shall be installed the fixtures required by this section.~~]

(1) Water closets. There shall be:

(a) One (1) water closet for up to ten (10) males plus one (1) additional water closet for each additional twenty-five (25) males or fraction thereof; and

(b) One (1) water closet for up to eight (8) females plus one (1) additional water closet for each additional twenty (20) females or fraction thereof.

(2) Urinals.

(a) There shall be:

1. One (1) urinal for each twenty-five (25) males or fraction thereof up to 150 males; and

2.[~~, and,~~] If there are over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.

(b) [~~If urinals are provided for women, the same number shall be provided for women as for men.~~

~~(c)~~] If urinals are provided, a urinal may be substituted for a water closet, not to exceed one-third (1/3) of the required total number of water closets.

(c)[~~(d)~~] Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3) Lavatories. [~~(a)~~] There shall be one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each additional twenty (20) males and [~~each~~] fifteen (15) females or fraction thereof. [~~(b) Separate dental lavatories shall be provided in community toilet rooms at a ratio of one (1) dental lavatory to each fifty (50) persons.~~]

(4) Additional fixtures. There shall be:

(a)1. One (1) bathtub or shower for each eight (8) persons or fraction thereof, up to 150 persons; and

2. [~~.~~] If there are over 150 persons, there shall be one (1) additional bathtub or shower [~~fixture~~] for each twenty (20) persons[~~. For women's dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women~~];

(b) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof;

(c) One (1) laundry tray or clothes washer for each fifty (50) persons or fraction thereof; and

(d) One (1) service sink or slop sink for each 100 persons or fraction thereof.

(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 13. Hospitals, Nursing Homes, and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 20:046, 20:056, and 9:010[~~, and this section~~]. Sanitary facilities shall be provided on each floor level and shall conform to this section. [~~the following:~~]

(1) Hospitals.

(a) Wards. There shall be:

1. One (1) water closet for each ten (10) patients or fraction thereof;

2. One (1) lavatory for each ten (10) patients or fraction thereof;

3. One (1) tub or shower for each fifteen (15) patients or fraction thereof; and

4. One (1) drinking fountain for each 100 patients or fraction thereof.

(b) Individual rooms. There shall be one (1) water closet, one (1) lavatory, and one (1) tub or shower.

(c) Waiting rooms. There shall be one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal). There shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each twenty (20) females or fraction thereof;

(c) One (1) lavatory for each ten (10) persons or fraction thereof;

(d) One (1) urinal for each fifty (50) males or fraction thereof;

(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof;

(f) One (1) drinking fountain on each floor; and

(g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.

(a) Cell. There shall be:

1. One (1) prison-type water closet; and

2. One (1) prison-type lavatory.

(b) Day rooms and dormitories.

1. There shall be:

a. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof;

b. One (1) lavatory for each twelve (12) inmates or fraction thereof;

c. One (1) shower for each fifteen (15) inmates or fraction thereof;

d. One (1) drinking fountain per floor; and

e. One (1) service sink or slop sink per floor.

2. For males, one (1) urinal may be substituted for each water closet if the number of water closets is not reduced to less than one-half (1/2) the number required.

(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.

(d) There shall be one (1) drinking fountain on each floor.

(e) There shall be one (1) service sink or slop sink per floor.

Section 14. Workshops, Factories, Mercantile, and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted.

(1) Workshops and factories: Sanitary facilities shall conform to the following:

(a) There shall be:

1. One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100;

2. One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100;

3. One (1) urinal for eleven (11) to fifty (50) employees;

4. Two (2) urinals for fifty-one (51) to 100 employees;

5. One (1) lavatory for each twenty-five (25) females or fraction thereof up to 100; and

6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;

(b)[~~7.~~] If in excess of 100 persons, there shall be:

1.[~~a.~~] One (1) additional water closet for each additional thirty (30) males and each additional thirty (30) females or fraction thereof;

2.[~~b.~~] One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and

3.[~~c.~~] One (1) additional urinal for each additional 100 males or fraction thereof;

(c) There shall be:

1.[~~8.~~] One (1) shower for each fifteen (15) persons or fraction thereof, exposed to skin contamination from irritating, infectious, or poisonous materials;

2.a.[~~9.~~] One (1) drinking fountain on each floor for each fifty (50) employees or fraction thereof, up to 100 employees; and

b.[~~.~~] If there are more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) employees or fraction thereof [~~persons~~]; and

3.[~~10.~~] One (1) service sink or slop sink per floor; and[~~.~~]

(d)1.[~~(b~~]) Individual sinks or wash troughs may be used in lieu of lavatories.

2. Twenty-four (24) inches of sink or trough, if provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.

(a) Employees.

1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within each store shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For a store containing not more than 3,000 square feet of

total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or accessible areas having a travel distance of not more than 500 feet within the building in which the store is located.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed in individual stores or in a central toilet room area or areas, if:

a. The distance from the main entrance of a store does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and there shall be:

1. One (1) water closet for one (1) to 150 males;

2. Two (2) water closets for 151 to 300 males;

3. Three (3) water closets for 301[~~300~~] to 450 males;

4. If over 500 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof; [~~Three (3) water closets plus one (1) water closet for each 500 males;~~]

5. One (1) urinal for fifty (50) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;

8. If over 300 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof; [~~Three (3) urinals plus one (1) urinal for each 300 males, or fraction thereof, over 600;~~]

9. One (1) water closet for one (1) to 100 females;

10. Two (2) water closets for 101 to 200 females;

11. Three (3) water closets for 201 to 400 females;

12. If over 400 females, three (3) water closets plus one (1) additional water closet for each additional 300 females or fraction thereof; [~~Three (3) water closets plus one (1) water closet for each 300 females in excess of 400;~~]

13. One (1) lavatory for one (1) to 200 persons;

14. Two (2) lavatories for 201 to 400 persons;

15. Three (3) lavatories for 401 to 700 persons;

16. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof; Three (3) lavatories plus one (1) lavatory for each 500 persons, or fraction thereof, in excess of 700;

17. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

18. One (1) service sink or slop sink per floor.

(3) Office buildings.

(a) Employees.

1. Except as established in subparagraph 2 of this paragraph, sanitary facilities within office buildings shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For an office building or space containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of not more than 500 feet within the same building.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the office building or space contains 5,000 square feet or more.

2. In an office building, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed within the individual offices, or in a central toilet room area or areas if:

a. The distance from the main entrance of an office space does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Separate sanitary facilities for each gender shall be provided as stated in this section.

1. For males and females there shall be:

a. One (1) water closet for one (1) to fifteen (15) persons;

b. Two (2) water closets for sixteen (16) to thirty-five (35) persons;

c. Three (3) water closets for thirty-six (36) to fifty-five (55) persons;

d. Four (4) water closets for fifty-six (56) to eighty (80) persons;

e. Five (5) water closets for eighty-one (81) to 110 persons;

f. Six (6) water closets for 111 to 150 persons;

g. If over 150 persons, six (6) water closets plus one (1) additional water closet for each additional forty (40) persons or fraction thereof; [~~Six (6) water closets plus one (1) water closet for each forty (40) additional persons;~~]

h. One (1) lavatory for one (1) to fifteen (15) persons;

i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;

j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;

k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;

l. Five (5) lavatories for ninety-one (91) to 125 persons;

m. If over 125 persons, five (5) lavatories plus one (1) additional lavatory for each additional seventy-five (75) persons or fraction thereof; and [~~Five (5) lavatories plus one (1) lavatory for each forty-five (45) additional persons; and~~]

n. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

2. For males, if urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed if the number of water closets is not reduced to less than seventy (70) percent of the minimum specified.

Section 15. Swimming Pool Bathhouses. A swimming pool bathhouse shall comply with the requirements established in 902 KAR 10:120 and this section.

(1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, with one (1) part designated for "Males" or "Men" and the other part designated for "Females" or "Women."

(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load, as defined in 902 KAR 10:120, and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less, there shall be:

1. One (1) water closet for each seventy-five (75) males or fraction thereof;

2. One (1) water closet for each fifty (50) females or fraction thereof;

3. One (1) urinal for each seventy-five (75) males or fraction thereof;

4. One (1) lavatory for each 100 persons or fraction thereof;

5. One (1) shower per each fifty (50) persons or fraction thereof; and

6. One (1) drinking fountain per each 200 persons or fraction thereof;[~~.~~]

(b) For swimming pools in which the total bather capacity exceeds 200 persons, there shall be:

1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females or fraction thereof;

2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males or fraction thereof;

3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof;

4. One (1) lavatory for up to 150 persons [~~males or females~~];

5. Two (2) lavatories for 151 to 400 persons [~~males or females~~];

6. Three (3) lavatories for 401 to 750 persons [~~males or females~~];

7. If over 750 persons, three (3) lavatories plus one (1) additional lavatory for each additional 750 persons or fraction thereof; [~~If in excess of 750 males or females, three (3) lavatories plus one (1) additional lavatory for each additional 750 males or females over 750;~~]

8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;

9. If over 150 persons, three (3) showers plus one (1) additional shower for each additional 500 persons or fraction thereof; and [~~If in excess of 150 persons, one (1) additional shower plus one (1) shower per each 500 persons over 650; and~~]

10. One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of:

(a) One (1) hour or less shall have one (1) shower for each six (6) swimmers; and

(b) One (1) to two (2) hours shall have one (1) shower for each ten (10) swimmers.

(4) Satisfactorily designed and located shower facilities, including warm water and soap, shall be provided for each sex. Showers shall be supplied with water at a temperature of not less than ninety (90) degrees Fahrenheit and at a flow rate of at least three (3) gallons per minute. Thermostatic, tempering, or mixing valves shall be installed to prevent scalding of the bathers.

(5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the facilities are [~~conveniently~~] available to pool patrons within 150 feet from the pool.

Section 16. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020, Section 8, and this section.

(1) Except for a self-contained recreational vehicle community [~~park~~], each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified in this section.

(2) Except for a self-contained recreational vehicle community [~~park~~], sanitary facilities shall be provided as follows:

(a) If there are one (1) to fifteen (15) vehicle spaces, there shall be for:

1. Males: One (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: One (1) water closet, one (1) lavatory, and one (1) shower;

(b) If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:

1. Males: One (1) water closet, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: Two (2) water closets, two (2) lavatories, and two (2) showers;

(c) If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:

1. Males: Two (2) water closets, one (1) urinal, three (3) lavatories, and three (3) showers; and

2. Females: Two (2) water closets, three (3) lavatories, and three (3) showers;

(d) If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:

1. Males: Two (2) water closets, two (2) urinals, three (3) lavatories, and three (3) showers; and

2. Females: Three (3) water closets, three (3) lavatories, and three (3) showers;

(e) If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:

1. Males: Three (3) water closets, two (2) urinals, four (4) lavatories, and four (4) showers; and

2. Females: Four (4) water closets, four (4) lavatories, and four (4) showers;

(f) If there are eighty-one (81) to 100 vehicle spaces, there shall be for:

1. Males: Four (4) water closets, two (2) urinals, five (5) lavatories, and five (5) showers; and

2. Females: Five (5) water closets, five (5) lavatories, and five (5) showers; and

(g) If over 100 vehicle spaces are provided, there shall be provided:

1. One (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof;

2. One (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and

3. One (1) additional urinal for males per additional 100 vehicle spaces or fraction thereof.

Section 17. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section.

(1)(a) Each residential camp site shall be provided with sanitary facilities for each sex as specified in this section.

(b) A day camp shall:

1. Not be required to provide shower facilities; and

2. Provide all other sanitary facilities for each sex as specified in this section.

(2) Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:

1. Males: One (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: Two (2) water closets, one (1) lavatory, and one (1) shower;

(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:

1. Males: Two (2) water closets, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: Two (2) water closets, two lavatories, and two showers;

(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:

1. Males: Two (2) water closets, two (2) urinals, two (2) lavatories, and three (3) showers; and

2. Females: Three (3) water closets, two (2) lavatories, and three (3) showers;

(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:

1. Males: Three (3) water closets, two (2) urinals, three (3) lavatories, and four (4) showers; and

2. Females: Four (4) water closets, three (3) lavatories, and four (4) showers;

(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:

1. Males: Three (3) water closets, three (3) urinals, three (3) lavatories, and five (5) showers; and

2. Females: Five (5) water closets, three (3) lavatories, and five (5) showers;

(f) If there are eighty (80) to ninety-five (95) persons served, there shall be for:

1. Males: Four (4) water closets, three (3) urinals, four (4) lavatories, and six (6) showers; and

2. Females: Six (6) water closets, four (4) lavatories, and six (6) showers; and

(g) If over ninety-five (95) persons are served, there shall be provided:

1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served;

2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and

3. One (1) additional urinal per fifty (50) additional males or fraction thereof.

(3)[~~(h)~~] Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation, relating to elementary through secondary level school buildings.

(4)[~~(3)~~] Water closets may [~~shall~~] be substituted for urinals if facilities are to be used by both sexes.

Section 18. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020, 45:005, and this section.

(1) Food stores.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities shall be provided for the employees.

(b)1. Separate sanitary facilities for each sex shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities shall be:

a.[~~,~~] Based on one (1) person per fifty (50) square feet; and

b.[~~, shall be~~] Installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a

store does not exceed 500 feet.

(c) There shall be:

1. One (1) water closet for one (1) to 100 persons;

2. Two (2) water closets for 101 to 200 persons;

3. Three (3) water closets for 201 to 400 persons;

4. If over 400 persons, three (3) water closets plus one (1) additional water closet for each additional 500 males or 300 females or fraction thereof; [~~Three (3) water closets plus one (1) water closet for each 500 males or 300 females in excess of 400;~~]

5. One (1) urinal for eleven (11) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;

8. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof; [~~Three (3) urinals plus one (1) urinal for each 300 males or fraction thereof, over 600;~~]

9. One (1) lavatory for one (1) to 200 persons;

10. Two (2) lavatories for 201 to 400 persons;

11. Three (3) lavatories for 401 to 700 persons;

12. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof; [~~Three (3) lavatories plus one (1) lavatory for each 500 persons or fraction thereof in excess of 700;~~]

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

14. One (1) service sink, utility sink, or curbed mop basin per floor as required by the Cabinet for Health and Family Services.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities for each sex shall be provided for the employees.

(b)1. Except as provided in subparagraph 3 of this paragraph, in a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees.

2. Carryout-type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

3. A restaurant with a business occupancy of one (1) to fifteen (15) persons shall:

a. Comply with the requirements in paragraphs (c) and (e) of this subsection; or

b. Provide one (1) unisex facility consisting of one (1) water closet and one (1) lavatory.

(c) There shall be:

1. [~~One (1) unisex restroom consisting of one (1) water closet and one (1) lavatory for one (1) to fifteen (15) persons:~~

~~2.~~] Two (2) water closets for one (1) to 100 persons;

2.[~~3.~~][~~2.~~] Three (3) water closets for 101 to 200 persons;

3.[~~4.~~][~~3.~~] Four (4) water closets for 201 to 300 persons; and

4. If over 300 persons, four (4) water closets plus one (1) additional water closet for each additional 200 persons or fraction thereof. [~~5.~~][~~4.~~] [~~Four (4) water closets plus one (1) water closet for each additional 200 persons or fraction thereof over 300.~~]

(d) There shall be:

1. One (1) urinal for fifty (50)[~~eleven (11)~~] to 200 males; and

2. If over 200 males, one (1) urinal plus one (1) additional urinal for each additional 150 males or fraction thereof. [~~One (1) additional urinal for each additional 150 males or fraction thereof over 150.~~]

(e) There shall be:

1. One (1) lavatory for one (1) to 200 persons;

2. Two (2) lavatories for 201 to 400 persons;

3. Three (3) lavatories for 401 to 600 persons; and

4. If over 600 persons, three (3) lavatories plus one (1) additional lavatory for each additional 200 persons or fraction thereof. [~~One (1) additional lavatory for each additional 200 persons or fraction thereof over 600.~~]

(f) There shall be:

1. One (1) drinking fountain for one (1) to 100 persons; and

2. If over 100 persons, two (2) drinking fountains plus one (1) additional water fountain for each additional 400 persons or fraction thereof. [~~Two (2) drinking fountains for 101 to 500 persons or fraction thereof.~~]

(g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) There shall be one (1) service sink, utility sink, or curbed mop basin on each floor as required by the Cabinet for Health and Family Services.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees.

(3) Licensed food establishments. In all food establishments licensed by the Cabinet for Health and Family Services, Department for Public Health, the [~~following~~] requirements in this subsection shall be met.[~~:~~]

(a) Hand-washing[~~Hand washing~~] sinks.

1. All hand-washing [~~hand washing~~] sinks shall have a minimum hot water temperature of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit.

2. Self-closing faucets shall provide a flow of water for no less than fifteen (15) seconds from activation.

3. Placement of hand-washing [~~hand washing~~] sinks shall be approved by the Cabinet for Health and Family Services, Department for Public Health pursuant to 902 KAR 45:005.

(b) A three (3) compartment sink for washing utensils shall be required which shall [~~may~~] drain by:

1. A direct connection with a minimum of a two (2) inch drain; or

2. An indirect connection to a three (3) inch trap with a minimum of an eight (8) inch by eight (8) inch open grated floor sink.

(c) Dishwashing or ware washing machines shall discharge indirectly through a three (3) inch open receptacle.

(d) Residential type dishwashing machines shall [~~may~~] discharge:

1. Through [~~either~~] an air gap device; or

2. Indirectly through a three (3) inch open receptacle.

(e) Food preparation sinks shall discharge by an indirect connection to a minimum three (3) inch trap.

(f) All hub drains, open receptacles, floor sinks, or other waste receptacles shall extend one (1) inch above the floor plane unless a full grate/strainer is installed flush with the floor.

(g) Occupied mobile food units **not** located within an existing permitted food establishment shall:

1. [~~Use only Kentucky Plumbing Code approved material:~~

~~2.~~] Meet the requirements of the Kentucky Plumbing Code;

2.[~~3.~~] Have a waste tank no less than fifty (50) percent larger than the freshwater tank;

3.[~~4.~~] Have a National Sanitary Foundation (NSF) approved freshwater tank for potable water; and

4.[~~5.~~] Have a minimum of a three (3) compartment sink and one (1) hand sink.[~~If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Health Services, it may substitute for the lavatory.~~]

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at 9 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, July 13, 2010)

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.010, 216B.062, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.062(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the pro-

gram. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1 Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075 shall be as established in this subsection:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, **cardiac catheterization,[**~~cardic cather~~**]** open heart surgery, positron emission tomography equipment, and new technological developments shall be provided on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for residential hospice facilities, hospice agencies, and home health agencies shall be provided on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services, and rehabilitation agencies shall be provided on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities, and personal care beds shall be provided on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for long-term care beds, acute care hospitals including all other State Health Plan covered services to be provided within the proposed acute care hospital, [~~cardiac catheterization~~], acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, limited services clinics, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers, and birthing centers shall be provided on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be provided on the third Thursday of the following months:

1. June; and

2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) calendar days prior to the date of the desired public notice.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 15, 2010

FILED WITH LRC: April 15, 2010 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS April 14, 2010 and July 13, 2010)

902 KAR 20:400. Limited services clinics.

RELATES TO: KRS 311.550(12), 314.011(7), 29 C.F.R. 1910.1030, 45 C.F.R. 160, 164

STATUTORY AUTHORITY: KRS 216B.042**[**~~, 216B.105~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.**[**~~KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation.~~**]** This administrative regulation establishes licensure requirements for the operation of and services provided by limited services clinics.

Section 1. Definitions. (1) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Clinic" means a limited services clinic.

(4) "Physician" is defined by KRS 311.550(12).

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a limited services clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a limited services clinic shall be $500[~~$800~~].

Section 3. Scope of Operations and Services. (1) A limited services clinic shall:

(a) Be located in a nonmobile facility;

(b) Not have an extension or satellite;

(c) **Except for the provision of health care services at an off-site location for the purpose of community vaccination or a health screening drive,** assure that limited health services as described in subsection **(3)[**~~(4)~~**]** of this section are provided to patients exclusively at the facility's location;

(d)[~~(c)~~] Not provide services to a child younger than twenty-four (24) months of age; **and**

(e) **[**~~Except for the influenza vaccine, not provide childhood immunizations; and~~

~~(f)~~][~~(d)~~] Provide appropriate referrals for each patient who requires care and treatment that is beyond the scope of services provided by the clinic.

(2) If a clinic is located within a retail location, the clinic shall have policies and procedures which ensure that **patients are informed that they are not required to purchase any recom-**

mended or prescribed item from the host retail location[~~clinic personnel do not promote the use of services provided by the host retail location~~**]**.

(3)**[**~~A clinic shall not:~~

~~(a) Treat a patient's~~**]**[~~patient with a recurring or~~**][**~~chronic illness; or~~

~~(b) Refill a prescription for a patient's chronic illness~~**]**[~~patient who requires continuity of care~~**][**~~.~~

~~(4)~~**]** Health care services provided by a clinic shall:

(a) Be limited to conditions that may be safely and efficiently treated on an outpatient basis; and

(b) Include assessment, diagnosis, treatment, or counseling concerning any of the following:

1. Upper respiratory infection;
2. Sinus infection;
3. Allergy symptoms;
4. Acute bronchitis;
5. Ear infection or ear ache;
6. Ear wax removal;
7. Sore throat;
8. Influenza, excluding pregnant women;
9. Cold;
10. Coughs;
11. Laryngitis;
12. Breathing treatments with nebulizer;
13. Nausea, diarrhea, and vomiting;
14. Fever, excluding patients who have had a fever longer than seventy-two (72) hours;
15. Early Lyme Disease;
16. Pink eye or stye;
17. Skin infection or skin condition, which may include insect bites, rashes, ringworm, poison oak or ivy, scabies, hives, or impetigo;
18. Minor burn;
19. Skin tag removal;
20. Head lice;
21. Scalp rash;
22. Swimmer's itch;
23. Athlete's foot;
24. Cold sores;
25. Shingles;
26. Tick or insect bites;
27. Abrasions;
28. Minor cut closure with liquid skin adhesive;
29. Splinter removal;
30. Sprains or strains;
31. Urinary infection for females only, age twelve (12) to sixty-five (65);
32. **Patient education and counseling, including patient education regarding diabetes, hyperlipidemia, and hypertension;**
33. Sports physical;
34. Camp physical;
35. School physical;[~~Physical examination, which may include a sports physical, ~~**]**[~~or~~**][**~~camp physical, or~~**][**~~but shall exclude a~~**][**~~school physical;~~**]**
36.[~~33.~~**]** Vaccinations for patients age **eleven (11)[**~~sixteen (16)~~**]** and older;
37.[~~34.~~**]** Influenza vaccinations for patients age twenty-four (24) months and older;
38.[~~35.~~**]** Pre-employment health screening;
39.[~~36.~~**]** Tobacco cessation therapy;
40.[~~37.~~**]**[~~34. Vaccinations for patients age sixteen (16) and older;~~

~~35.~~]**[**~~Blood pressure screening;~~

~~36. Cholesterol screening;~~

~~37. Finger-stick blood sugar testing;~~

~~38.~~**]** Wart removal; or
41.[~~39.~~**]** Tuberculosis testing.

(4) This administrative regulation shall not limit a clinic's ability to:

(a) Order a laboratory test specific to a patient's presenting symptoms for a condition described in subsection (3) of this section. Only CLIA (Clinical Laboratory Improvement Amendments) waived testing may be performed on-site in a limited services clinic;

(b) Provide treatment, testing, screening, or monitoring for a patient pursuant to a patient's designated plan of care or order from a practitioner other than the practitioner who is staffing the limited services clinic;

(c) Provide episodic treatment for an acute exacerbation of a chronic condition that does not rise to the level of an emergency;

(d) Make an initial diagnosis of a patient's chronic illness and refer to an appropriate practitioner, where interim treatment, including the prescribing of medication, shall not exceed thirty (30) days unless further directed by the patient's appropriate practitioner; or

(e) Write a prescription for a patient's maintenance medication for a period of time not to exceed thirty (30) days. The clinic shall document its effort to contact the prescriber.

(5)(a) If the cabinet receives a request from an individual representing a clinic or the clinic's management entity for modification of the list of services established in subsection (3) of this section, the cabinet shall appoint and convene an advisory committee.

(b) The committee shall include at least one (1) representative from the:

1. Kentucky Hospital Association;
2. Kentucky Medical Association; and
3. Convenient Care Association;

(c) The committee shall review each request for modification of the list established in subsection (3) of this section and make recommendations to the cabinet regarding approval or denial of the request.

(d) The committee shall convene no sooner than eighteen (18) months from the date of adoption of this administrative regulation if a request for modification of the list is received within the eighteen (18) month period following adoption of this administrative regulation.

(e) After the committee is initially convened and makes its first set of recommendations to the cabinet, the committee shall reconvene no sooner than every eighteen (18) months thereafter to review requests and make recommendations regarding any requests received during the previous eighteen (18) month period.

(f) If the cabinet accepts all or any part of the committee's recommendation to modify the list of services established in subsection (3) of this section, the cabinet shall file an amendment to this administrative regulation within forty-five (45) days of the committee's recommendation.

Section 4. Administration and Operation. (1) Licensee.

(a) A licensee shall be an entity or individual whose clinic:

1. Provides limited health care services as described by Section **3(3)[**~~3(4)~~**]** of this administrative regulation; and

2. Is legally responsible for the clinic and for compliance with all federal, state, and local laws and administrative regulations pertaining to the operation of the clinic.

(b) A licensee shall establish written policies for the administration and operation of the clinic.

(c) A licensee shall establish lines of authority and designate a clinic director who shall:

1. Be employed by or under contract with the licensee;

2. Be principally responsible for the daily operation of the clinic; and

3. Maintain oversight of the clinical activities and administrative functions in the clinic[~~; and~~

~~4. Be an advanced registered nurse practitioner or a physician~~].

(2) Policies.

(a) Administrative policies. A clinic shall have written administrative policies which shall:

1. Be maintained on the premises of the clinic or maintained in an electronic format, available for copying to a disk or printing at the clinic;

2. Be subject to review, inspection, and copying by the cabinet; and

3. Cover all aspects of the clinic's operation, including:

a. A description of organizational structure, staffing, and allocation of responsibility and accountability;

b. Clinical practice guidelines for diagnosing and treating patients in each of the service categories provided by the clinic to ensure the proper identification of patients whose needs are beyond the clinic's scope of services;

c. Guidelines for referring an individual whose needs exceed the clinic's services;

d. Policies and procedures for determining if physician consultation is required;

e. Policies and procedures for the guidance and control of personnel performances;

f. Procedures to be followed if the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals; and

g. Procedures for the submission of a patient's written or verbal grievance to the clinic. The grievance process shall specify time frames for review of the grievance and the provision of a response.

(b) Patient rights policies.

1. A clinic shall:

a. Adopt written policies regarding the rights and responsibilities of patients;

b. Display publicly at the clinic a copy of its written policy regarding the rights and responsibilities of patients; and

c. Provide a copy of the clinic's patients rights policies upon request by an individual who seeks services there.

2. A clinic's patient rights policies shall assure that each patient is:

a. Informed of services available at the clinic;

b. Provided[~~Has~~] a right to information regarding the **charge to the patient for each service offered by the clinic[**~~clinic's charge structure~~**]** and whether the clinic accepts payment for the proposed services from third-party payors, including insurance, Medicare, or Medicaid;

c. Informed of his or her medical condition, unless medically contraindicated as documented in his or her medical record;

d. **Notified of all relevant treatment or maintenance courses of action and given the opportunity to participate in the clinical decision-making process[**~~Afforded the opportunity to participate in the planning of his or her medical treatment~~**]**;

e. Informed that he or she may voice a grievance or recommend changes in policies and services;

f. Assured confidential treatment of his or her records and is afforded the opportunity to approve or refuse the release of those records to an individual not involved in his or her care, except as required by third-party payment contract or otherwise permitted by applicable law; and

g. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(3) Personnel.

(a)1. During a clinic's operating hours, the clinic shall have present at least one (1) advanced registered nurse practitioner, [~~or~~] physician, or physician assistant approved for off-site supervision according to KRS 311.860.

2. The clinic shall employ additional staff or ancillary personnel as needed to ensure the safe and efficient delivery of services provided by the clinic.

(b)1. Clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:

a. Thorough job orientation for new personnel; and

b. Regular in-service training programs, emphasizing competence and professionalism necessary for effective health care.

2. A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.

(c) During a clinic's hours of operation, at least one (1) health care professional shall be at the clinic who has:

1. Training in basic cardiac life support for health care providers; and

2. [~~Certification with training in the use of an automated external defibrillator (AED); and~~

~~3.~~] Training in the treatment of anaphylactic reaction.

(d) A clinic **or its management entity** shall maintain a written job description for each position that shall be reviewed and revised as necessary.

(e) A clinic **or its management entity** shall maintain current personnel records for each employee. An employee's personnel record shall include the following:

1. Employee's name, address, and social security number;

2. Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;

3. Record of training and experience; and

4. Record of performance evaluations.

(f)1. A clinic **or its management entity** shall maintain the **[**~~written~~**]** materials required by this subsection **and make the materials immediately available to the cabinet or its duly appointed representative upon request[**~~on the premises of the clinic or maintain a scanned copy of the original materials in an electronic format, available for copying to a disk or printing at the clinic~~**]**.

2. The materials shall be subject to review, inspection, and copying by the cabinet or its duly appointed representative.

(4) Medical records.

(a) A clinic shall maintain medical records that contain the following:

1. Medical history relevant to services provided by the clinic;

2. Description of each medical visit or contact, including a description of the:

a. Condition or reason for the visit or contact;

b. Assessment;

c. Diagnosis;

d. Services provided;

e. Medications and treatments prescribed; and

f. Disposition made;

3. Reports of physical examinations, laboratory, and other test findings; and

4. Documentation of referrals made, including the reason for the referral and to whom the patient was referred.

(b) A clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and **administrative** regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

(c) A clinic shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;

2. Transfer medical records or an abstract upon request, subject to required releases and authorizations; and

3. Have a specific location designated for the storage and maintenance of the clinic's medical records or maintain scanned copies of the original medical records in an electronic format **or maintain electronic health records**, available for copying to a disk or printing at the clinic.

(d) A licensee shall safeguard the clinic's medical records and their content against loss, defacement, and tampering.

(e) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.

(5) Quality assurance program. A clinic shall:

(a) Have a written quality assurance program that:

1. Includes effective mechanisms for reviewing and evaluating patient care; and

2. Provides for appropriate responses to findings; and

(b) Maintain a copy of the written quality assurance plan on the premises of the clinic.

Section 5. Provision of Services. (1) Posting requirements. A clinic shall post the following information on the door patients use to enter the clinic or prominently near the clinic's entrance:

(a) The clinic's hours of operation;

(b) The clinic's name; and

(c) A list of services provided by the clinic, accompanied by a statement which advises that the clinic is not equipped to provide emergency treatment for life threatening conditions.[~~:~~

~~1. The patient to seek care from his or her practitioner or an emergency provider for all other complaints or conditions; and~~

~~2. That the clinic cannot provide emergency treatment.~~]

(2) Visits. A clinic shall:

(a) Provide each patient with a copy of the visit summary sheet at the conclusion of the visit; and

(b) Upon request by the patient, send a copy of the visit summary sheet or visit-specific medical record**, including documentation of any vaccinations administrated by the clinic,** by facsimile or electronically to the patient's primary care practitioner[~~provide a copy of the medical record of each visit to the patient and, with the patient's consent, a facsimile or electronically transmitted copy of the medical record of the visit to the patient's primary care practitioner, provided~~] at no charge to the patient**, or provide a paper copy of the visit summary sheet to the patient to deliver to the patient's primary care practioner**.

(3) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of limited services offered by the clinic, the clinic:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(4) [~~Off hours coverage.~~

~~(a) A clinic shall make arrangements for the delivery of the services it provides during the hours when it is not open, which may include an answering service referring patients to another provider of the same services that is open at those hours.~~

~~(b) A clinic may provide a taped message that directs patients to a toll-free number that will enable the patient to speak directly with a practitioner.~~

~~(5)~~] Equipment. [~~(a)~~] Equipment used for direct patient care shall comply with the following:

(a)[~~1.~~] The licensee shall establish and follow a written preventive maintenance program to ensure that equipment is operative and properly calibrated;

b.[~~2.~~] All personnel engaged in the operation of the equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations; and

c.[~~3.~~] A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment. [~~(b) A clinic shall have an AED on-site.~~]

Section 6. Compliance with Applicable Statutes and Regulations. Each health care professional who provides services at a clinic shall act at all times in compliance with:

(1) Obligations or requirements associated with his or her respective professional license or credential; and

(2) Applicable federal, state, and local laws and administrative regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

Section 7. Physical and Sanitary Environment. (1) Accessibility. A clinic shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to federal, state, and local laws.

(2) Fire safety. A clinic shall be approved by the state Fire Marshal's office before licensure is granted by the cabinet.

(3) Physical location and overall environment.

(a) A clinic shall have at least one (1) exam room [~~with a minimum floor area of eighty (80) square feet for each examination room, exclusive of fixed casework~~].

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(c) The premises shall have a waiting room or seating for waiting patients near the entrance to the clinic [~~waiting area~~].

(d) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines, available at www.cdc.gov/ncidod/dhqp/guidelines.html, and include:

1.[~~a.~~] Prevention of disease transmission to and from patients, visitors, and employees, including:

a.[~~i.~~] Universal blood and body fluid precautions;

b.[~~ii.~~] Precautions against airborne transmittal of infections; and

c.[~~ii.~~] Work restrictions for employees with infectious diseases; and

2.[~~b.~~] Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The clinic shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The clinic's facility, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from accumulation of dirt, rubbish, and foul, stale, or musty odors.

(g) Hazardous cleaning solutions, compounds, and substances shall be:

1. Labeled;

2. Stored in closed metal containers;

3. Kept separate from other cleaning materials; and

4. Kept in a locked storage area apart from the exam room.

(h) The clinic shall be kept free from insects and rodents, and their nesting places.

(i) Garbage and trash:

1. Shall be removed from the premises regularly; and

2. Containers shall be cleaned regularly as needed[~~daily~~].

(j) A clinic shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

1. Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

4. Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(k)1. Disposable waste shall be:

a. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

2. The clinic shall establish specific written policies regarding handling and disposal of waste material.

(l)1. A clinic shall provide a hand washing facility in each exam room with:

a. Hot and cold water and blade type operating handles;

b. [~~or~~] Knee or foot controls; or

c. Motion activated technology [~~in each exam room~~].

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(m)1. If a clinic [~~that~~] is located on the premises of another entity and does not have toilet facilities located within the clinic, the clinic may share toilet facilities with the other entity.

2. A clinic that shares toilet facilities with another entity shall establish policies and procedures to protect the privacy and dignity of the patient.[~~may share toilet facilities with that entity.~~]

2. If a clinic provides services in which a urine sample is needed, the clinic's toilet facilities shall be located within the clinic.

(n) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

MARY REINLE BEGLEY, Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: March 10, 2010

FILED WITH LRC: March 12, 2010 at noon

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(As Amended at ARRS, July 13, 2010)

921 KAR 1:410. Child support collection and enforcement.

RELATES TO: KRS 13B.010(2), **15.055,** 67A.620, 95.620(1), 95.878, 131.570, 161.700(1), 186.570(2), 205.594, 205.595, 205.710-205.802[~~205.800~~], 237.110(4), 403.211-403.215, 405.060(2), (3), 405.405-405.991, [~~405.430-405.510,~~] 407.5101-407.5902[~~5701~~], 427.120, 427.125, 31 C.F.R. 285.1 and, 285.3, 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3,[~~302.65,~~] 303.6, 303.31, 303.32, 303.35, 303.70, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, **664,** 666(a)(1)-(4), (6)-(12), (14)-[~~(17),~~] (19), (b), and, (c)

STATUTORY AUTHORITY: KRS 15.055(2),**[**~~131.570,~~**]** 186.570(2), 194A.050(1), **205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520,[**~~205.710-205.802, 403.211-403.215, 405.405-405.991, 407.5101-407.5902~~**][**~~205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520,~~] 42 U.S.C. 652, 653, 654, 656, 659, 666(a), (b), and, (c), 669A

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)**(o)** 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.

Section 1. Definitions. "Lump sum payment of any kind" means a lump sum payment of earnings as defined in KRS 427.005.

Section 2. Collection. (1) Income withholding shall be used for the collection of a[~~an assigned~~] support obligation or health insurance coverage in an order being enforced by the Child Support Enforcement (CSE) program[~~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 by sending, certified mail, returned receipt requested, the **CS-89, Income Withholding for Support, and CS-72, National Medical Support Notice**[~~for an assigned support obligation or health insurance coverage within~~]:

(a)**[**~~CS-89, Income Withholding for Support; and~~

~~(b) CS-72, National Medical Support Notice.~~

~~1.~~**]** Within fifteen (15) calendar days of a request for income withholding; or

(b)[~~2.~~**]** Within[~~by sending the employer or other income source:~~

~~1. CS-89, Income Withholding for 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.

(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; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) business[~~working~~] days after receipt of the notice.

(4) The employer or other income source, in accordance with KRS 405.465(4) and (6)(a), may deduct the sum of one (1) dollar for each payment made pursuant to the order.

(5) The total amount to be withheld may not exceed the maximum amount allowed under 15 U.S.C. 1673(b).

(6) In the case of an initial withholding,[~~In accordance with KRS 405.467(4),~~] the cabinet shall send the[~~an~~] obligor a copy of [~~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, in accordance with KRS 405.467(4); and

(b) Shall apply to the current and any subsequent employer.

(7)[~~(5)~~] The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(8)[~~(6)~~] If an obligor terminates employment, the employer or other income source shall notify the cabinet of the obligor's last known address and name of the new employer, if known, in accordance with[~~take action pursuant to~~] KRS 405.465(5).

(9)[~~(7)~~] An obligor shall inform the cabinet of any changes in:

(a)[~~1.~~] A current employer or source of income; [~~and~~]

(b)[~~2.~~] Access to health insurance; and

(c) Residential or mailing address.

(10)[~~(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.

(11)[~~(9)~~] If [~~only~~] an arrearage only amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by court[~~judicial~~] or administrative order.

(12)[~~(10)~~] The employer or other income source shall[~~, within seven (7) working days from the date an amount is withheld,~~] forward:

(a) The[~~An assigned~~] support obligation payment to the state disbursement unit in the child support agency within seven (7) working days from the date an amount is withheld; or

(b) The[~~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 within twenty (20) business days.

(13)[~~(11)~~] The employer or other income source[~~:~~

~~(a)~~] shall include on the transmittal to the cabinet the obligor's:

(a)[~~1.~~] Name;

(b)[~~2.~~] Social Security number; and

(c)[~~3.~~] Cabinet-assigned identification number.

(14) The employer or other source of income[~~; and~~

~~(b)1.~~] shall not be required to change payroll frequency but shall withhold:

(a) At least once monthly; and

(b)[~~or~~

~~2.~~] May combine withheld amounts from more than one (1) obligor's income in a single payment to[~~due~~] the cabinet [~~into one (1) payment~~], if the amount attributable to each obligor is identified by:

1.[~~a.~~] Name;

2.[~~b.~~] Social Security number; and

3.[~~c.~~] Cabinet-assigned identification number.

(15)**[**~~Lump sum payments to be made to an obligor.~~**]** (a) **An[**~~The cabinet requires an~~**]** employer with twenty (20) or more employees **shall[**~~to~~**]** provide written notification of a lump sum payment of any kind of $150 or more to be made to an employee who is currently under an income withholding order, in accordance with KRS 405.465.

1. The written notice to the cabinet shall include the following:

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 include multiple employees on one (1) written notification if the information in accordance with this subparagraph **1** of this paragraph is provided for each employee.

(b) Upon receipt of notification of a lump sum payment, Child Support Enforcement shall determine if the employee owes an arrearage on a support obligation enforced by the cabinet.

(c) If the employee owes no arrearage, Child Support Enforcement 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 paragraph (b) of this subsection, Child Support Enforcement 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 Child Support Enforcement 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 Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

(16) If an obligor receives[~~(12) Withholding of~~] unemployment compensation benefits, the cabinet shall:[~~.~~]

(a) [~~The cabinet,~~] Through an agreement with the Education Cabinet, Office of Employment and Training, submit[~~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) Notify an obligor with[~~The cabinet shall provide~~] a CS-73, Unemployment Insurance Letter, along with a copy of the[~~and~~] CS-76, Unemployment Insurance Notice of Withholding [~~to notify an obligor~~] 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 3. Support Collection by Methods Other than Collection through Income Withholding[~~2. Enforcement~~]. (1) Federal income tax refund offset and federal 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; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case, for which the cabinet is providing services, 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 following:

a. A copy of the current support order; [~~and~~]

b. A copy of the payment record; and

c. The custodial parent's last known address.

(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 31 C.F.R. 285.1 and 285.3[~~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.

(d) An Advance Notice of Intent to Collect Past Due Support, Form CS-122, shall be sent to the obligor of the intent to intercept the tax refund and the administrative offset to be applied to the obligor's account.

1. The notice shall inform noncustodial parents:

a. Of their right to contest the fact that past due support is owed or the amount of past due support by requesting an administrative hearing;

b. Of the procedures and timeframe for contacting CSE to request an administrative hearing;

c. That the hearing shall be conducted by the submitting state unless the noncustodial parent requests the hearing be conducted by the state with the order upon which the referral for offset is based; and

d. That, in the case of a joint return, the Secretary of the U.S. Treasury shall notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

(2) State income tax refund offset.

(a) A public assistance case and nonpublic 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 there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet or the Child Support Enforcement program is providing services involving past due child support, a specific dollar amount of medical support, or spousal support;

3. An arrearage of at least $150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) In accordance with KRS 131.570, an advance written notice shall be sent to the obligor that he may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430.[~~:~~

~~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 state administrative offset. The cabinet shall:

(a) Identify a child support case for state administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (2)[~~(1)~~](a) or (b) of this section; **and**

(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; 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.**a.** Assignment of support is made to the cabinet; or

b.[~~2.~~**]** Child Support Enforcement program is providing support services; and

2.[~~3.~~**]** The obligor has failed to make child support payments in an amount equal to support payable for one (1) month[~~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 Deliver, and CS-69, Answer to Withhold and Deliver, 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 and Deliver, 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. To notify[~~After notifying~~] the obligor that the funds in the account with the financial institution may be retained by requesting an administrative hearing to contest the Order to Withhold and Deliver[~~contesting the order to withhold and requesting an administrative hearing~~] in accordance with 921 KAR 1:430;

(d) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following

actions within twenty (20) calendar days from the date of receipt of a CS-68:

1. Pay the total arrearage;

2. Request and administrative hearing to contest the CS-68; or

3. Post a bond satisfactory to the cabinet**; and[**~~.~~**]**

(e) After an administrative hearing, if a case does not qualify for the withhold and deliver process, send a CS-70, Release of Order to Withhold and Deliver to:

1. The obligor; and

2. The financial institution.[~~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 financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar 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), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 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, Noncustodial Parent's Answer to Withhold and Deliver,[~~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) A CS-70 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 Income Support, Child Support Enforcement, and 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 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) of this subsection, Child Support Enforcement 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, Child Support Enforcement 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, Child Support Enforcement 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 Child Support Enforcement 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 Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.~~]

Section 4.[~~3. Administrative~~] Enforcement Actions. (1) Liens.

(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 child support has been assigned to the cabinet;[~~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. Issue a[~~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 within or outside Kentucky in accordance with KRS 205.745 or 205.7785; and

2. Provide a CS-119, Noncustodial Parent's Notice of Lien, along with a copy of the CS-85 to the obligor notifying him that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

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**.[**~~;~~**]**

(c) To release a lien, the cabinet shall provide a CS-120, Release of Lien, 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: 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;~~

~~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) License and certificate denial, suspension, or revocation.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 205.712(9) [~~and (10), the cabinet shall~~]:

1. The cabinet shall forward the name of the individual to a

board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

2. The denial or suspension shall remain in effect until:

a. The obligor makes full payment of the arrears;

b. Payments on the past due child support are made in accordance with a court order, an administrative order, or Payment Agreement, CS-78;

c. The obligor complies with the subpoena or a warrant relating to paternity or child support proceedings has been removed;

d. The obligor provides supporting documentation of extenuating circumstances that is accepted by the cabinet; or

e. The appeal of the denial or suspension is upheld and the license is reinstated.

3. 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 **a CS-44, Notice of Intent to Request Denial or Suspension, which includes:**

a.[, by certified mail]**[**:

a.**]**[1.]**[**A CS-44, Notice of Intent to Request Denial or Suspension, which includes:

i.**]** A section for an Answer to Notice of Intent providing the obligor with notice of[;

2. Notification that] the obligor's right to[obligor may] request an administrative hearing contesting the action as specified in 921 KAR 1:430; and

b.[ii.**]**[3.] Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if an action specified in paragraph (a)2 of this subsection has been taken.

4. The cabinet shall[the obligor:

a. Takes action as specified in Section 2(4)(g) 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 an action in paragraph (a)2 of this subsection has not been taken.

5. The cabinet shall[;

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:

a.[1.] A license or certificate denial;

b.[2.] Suspension; or

c.[3.] Revocation; and

6. The cabinet shall[(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, in accordance with KRS 205.712(11):

a. Has eliminated the child support arrearage;

b. Is making payments on the child support arrearage in accordance with a court or administrative order; or

c.[:

1. Takes action as specified in Section 2(4)(g) of this administrative regulation; or

2.] Complies with a subpoena or warrant relating to paternity or child support proceedings.

(b)[(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).

(3) Vehicle booting.

(a)[(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).

(b)[1.**]**[(a) The cabinet shall:

1.[a.**]** Verify with the Department of Vehicle Regulation that the vehicle identification number for the vehicle to be booted is register in the obligor's name;

2.[b.**]** Verify the vehicle to be booted is solely owned by the obligor, co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;

3.[c.**]** Send a notice of intent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;

4.[d.**]** File a lien in the county where the vehicle is kept; and

5.[e.**]** Set a target date for booting the vehicle, if the obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement.[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 days to respond to a notice of intent to boot a vehicle; and

2. Take action as specified in Section 2(4)(g) 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]

(c)[2.**]** The cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4)[4.**]**[(5) A] Newspaper publication of a list of delinquent obligors.

[(a)**]** If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 405.411, a cabinet designee under 205.712(6) may:

(a)[1.**]** Compile and furnish a list to a newspaper of general circulation in that county for publication; and

(b)[2.**]**[, as established in KRS 405.411, provided by the Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement, shall:

(a) Identify an obligor as specified by subsection (7)(a) of this section;

(b)] Include the name, last known address, and the past due amount owed by[of] the obligor [meeting the criteria; and

(c) Be published no less than twice yearly].

(5)[(6)**]** Passport denial, revocation, or limitation. **[**(a)**]** If the obligor owes an arrearage of $2,500 or more, in accordance with 42. U.S.C. 652 and 654(31), the cabinet shall:

(a)1.[1.a**]** Provide the Advance Notice to Collect Past due Support, CS-122, to the obligor of the determination to be referred for passport denial, revocation, or limitation; and

2.[b.**]** Include in the notice the consequences of the referral and the right to contest the action by requesting a hearing in accordance with KRS 205.712(8);

(b)[2.**]** Provide the U.S. Secretary of Health and Human Services the names of individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport**; and[**.**]**

(c)[3.**]**[(a) Take the action required by 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; and

(c)] Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet requests the release of the passport of an obligor that had been denied if any of the following criteria are met:

1.[a.**]** There was an erroneous submittal of a Social Security number;

2.[~~b.~~**]** There is a case of mistaken identity and the cabinet has verified this information;

3.[~~c.~~**]** The obligor is required to pay the past due support in full;

4.[~~d.~~**]** The obligor provides documentation on company letterhead verifying travel for employment or business purposes and makes alternate payment arrangements acceptable to the cabinet; or

5.[~~e.~~**]** There are extenuating circumstances in which the reason for travel is a family emergency and supporting documentation is provided to and accepted by 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) of this administrative regulation.~~]

(6)[~~(7)~~**]** Delinquent list.

(a) The cabinet shall[~~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 list of names of delinquent obligors[~~delinquent listing no less than twice yearly~~] for publication on the Internet, as established in KRS 15.055 and 205.712(16)**.[**~~;~~**]**

(b) The cabinet shall send the[~~(c) Send to an~~] obligor meeting the criteria in 40 KAR 1:080 a[~~paragraph (a) of this subsection the~~] CS-175, Notice of intent to Place Noncustodial Parent's Name on Delinquent Listing notifying him of his right to contest by requesting a hearing.[~~;~~]

[~~(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(g) of this administrative regulation;~~

~~(e) Accept an obligor's request for an administrative hearing as specified in 921 KAR 1:430;~~

~~(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) 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) 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 5.[~~4.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/10[~~4/09~~];

(b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 9/10[~~4/09~~];

(c) "CS-68 Order to Withhold and Deliver", edition 9/10[~~4/09~~];

(d) "CS-69 Answer to Withhold and Deliver", edition 9/10[~~4/09~~];

(e) "CS-70 Release of Order to Withhold and Deliver", edition 9/10[~~4/09~~];

(f) "CS-72 National Medical Support Notice", edition 9/10[~~4/09~~];

(g) "CS-73 Unemployment Insurance Letter", edition 9/10[~~4/09~~];

(h) "CS-76 Unemployment Insurance Notice of Withholding", edition 9/10[~~4/09~~];

(i) "CS-78 Payment Agreement", edition 9/10[~~4/09~~];

(j) [~~"CS-83 Order to Deliver", edition 4/09;~~

~~(k)~~] "CS-85 Notice of Lien", edition 9/10[~~4/09~~];

(k)[~~(l)~~] "CS-89 Income Withholding for Support", edition 9/10[~~4/09~~];

(l)[~~(m) "CS-92 Intrastate Notice of Lien", edition 4/09;~~

~~(n)~~] "CS-119 Noncustodial Parent's Notice of Lien", edition 9/10[~~4/09~~];

(m)[~~(o)~~] "CS-120 Release of Lien" edition 9/10[~~4/09~~];

(n)[~~(p)~~] "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/10[~~4/09~~];

(o)[~~(q) "CS-121. 1. Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", edition 4/09;~~

~~(r)~~] "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 9/10[~~4/09~~]; **and**

(p)[~~(s) "CS-164 Notice of Income Withholding" edition 4/09; and~~

~~(t)~~] "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 4/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amended After Comments)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 C.F.R. 55.206, 55.218, 55.219, 55.220, 30 C.F.R. 77.1301(c), 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require [~~Chapter 350in pertinent part requires~~] the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides for permits to conduct these operations. The administrative regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, [~~and~~] sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to [~~all~~] applications, [~~all~~] actions regarding permits, and [~~all~~] surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with [~~all~~] applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may[~~, at any time,~~] apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); and the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. 668a), as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the preliminary application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this administrative regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The following forms[~~, which~~] are required to be submitted by an applicant [~~applicants, are hereby incorporated by reference~~]:

1. Preliminary Application, MPA-00, 11/91;
2. Permittee Information for a Mining Permit, MPA-01, 11/91;
3. Operator Information for a Mining Permit, MPA-02, 11/91;
4. Technical Information for a Mining Permit, MPA-03, 11/91;
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B, 11/91;
6. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.C, 11/91;

7. Application to Revise a Mining Plan, MPA-04, 11/91;

8. Update of Permittee or Operator Information, MPA-05, 11/91;

9. Change of Corporate Owners, Officers or Directors, MPA-06, 11/91;

10. Application to Transfer a Mining Permit, MPA-07, 11/91;

11. Revision Application to Change Operator, MPA-08, 11/91;

12. Application for Renewal of a Mining Permit, MPA-09, 11/91;

13. Application for a Coal Marketing Deferment, MPA-10, 11/91; and

14. Minor Field Revision Application Form, SME 80, revised 9/91.

(d) [~~These forms may be reviewed or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

~~(e)~~] The application shall be complete with respect to all information required by KAR Title 405 [~~KAR~~] and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of [~~all~~] technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person [~~designate persons authorized by the applicant~~] to submit application modifications [~~to the application~~] to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the cabinet determines the larger scaled map is needed to adequately show mine site details. [~~However, if the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant.~~] The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified [~~registered~~] professional engineer, as defined in KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340 [~~Chapter 322~~], and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified [~~registered~~] professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 [~~Chapter 322~~] and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) An applicant shall submit an application fee of $2,500 for an original application or $1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(4) [~~The applicant shall submit an application fee of $375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.~~

~~(3)~~] The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after:

1. The date the application is submitted to the cabinet; or

2. [~~. The applicant may elect to begin publication on or after~~] The date the applicant receives the notification from the cabinet under Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review. (b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final con-

secutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c)[~~(b)~~] The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in subsection (5) of this section [~~by the cabinet~~].

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; [~~and~~]

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used[~~, show the north arrow and map scale, if a map is used~~].

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except when public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice under 405 KAR 7:060, [~~a statement~~] indicating that an experimental practice is requested which identifies [~~and identifying~~] the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2 Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; [~~, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;~~] and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including[~~, but not limited to~~]:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a)[~~,~~] Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and[~~, and shall~~]

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting [~~requester~~] at the conference;

(b) State whether the person requesting [~~requester~~] desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this administrative regulation.

(2) [~~Except as provided in subsection (3) of this section,~~] If a

permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to [~~according to the definition in~~] KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference [~~requester~~] in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:091 and 405 KAR 7:092 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and [~~shall be~~] accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4)[~~(3)~~] If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall[~~need~~] not be held.

(5)[~~(4)~~] Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) [~~A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet.~~] An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this administrative regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not

been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. [~~Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection.~~]

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except when evidence to the contrary is set forth in the permit application, or when the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(d) [~~(b)~~] Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(e)[~~(c)~~] If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and administrative regulations adopted pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;[~~.~~]

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application;[~~.~~]

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;[~~.~~]

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5);[~~.~~]

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary;[~~.~~]

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);[~~.~~]

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;[~~.~~]

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;[~~.~~]

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA or KRS Chapter 350;[~~.~~]

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;[~~.~~]

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land

use.[;]

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit;[.]

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;[.]

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;[.]

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20;[.]

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);[.]

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;[.]

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;[.]

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;[.]

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040; or[.]

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation.[, except that] Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this administrative regulation of a major revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation.[, except that] Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this administrative regulation for a minor revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation.[, except that] Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and KAR Title 405 [KAR] prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Division of Mine [Office of Surface Mining] Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this sub-

section shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General. The following general conditions apply to permits issued by the cabinet:

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; [~~and~~]

(b) [~~Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken,~~] The permittee shall conduct all surface coal mining and reclamation operations as described in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including[~~, but not limited to~~]:

1. [~~Any~~] Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3, for operations conducted under the permit, except when a stay of the order is granted and remains in effect, the permittee shall either [~~submit to the cabinet the following information, current to the date the order was issued, or~~] notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit;

(b) If a revision is required by an order issued under Section 19 of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the cabinet determines that the proposed change is of such scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include[~~, but shall not be limited to~~]:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal. Minor revisions shall be submitted on MPA-04, Application to Revise a Mining Plan [~~forms prescribed by the cabinet~~].

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons[~~, if any,~~] that the cabinet determines could have an interest or [~~that~~] may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) [~~The following minor revisions shall be deemed~~] Minor field revisions shall [~~which may~~] be reviewed and processed in accordance with this section by the appropriate regional office of the department. The following shall be minor field revisions, unless [~~However, if~~] the number of persons that potentially could have an interest or [~~that~~] may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (under paragraph (b) of the definition of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave the following roads as permanent:

a. Excess spoil fill roads;

b. Coal mine waste roads;

c. Roads to air shafts;

d. Roads within 100 feet of an intermittent stream or perennial stream; and

e. Roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted.

f. Roads to impoundments shall not be considered minor field revisions.

g. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.[~~, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.~~]

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, if the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, if:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 55.206, 55.218, 55.219, 55.220, and 30 C.F.R. 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities if that modification has already been approved in a revision for one of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

23. Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

24. Proposals for incidental boundary revisions for minor off-permit disturbances if:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation in subsection (5) of this section is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of $5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Mine Permits.

25. Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds shall not be processed as minor field revisions if:

a. The structure has a hazard classification of B or C;

b. The impoundment is a developed water resource land use;

c. The removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. The impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. The impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

26. Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a [~~registered~~] professional engineer showing the location of the disturbed area and the drainage area clearly.

27. Proposals to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.[~~; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days.~~] The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.

(f) Incidental boundary revisions shall be deemed minor revisions if they:

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Are contiguous to the current permit area;

3. Are within the same watershed as the current permit area;

4. Are required for an orderly continuation of the mining operation;

5. Involve mining of the same coal seam or seams as in the current permit;

6. Involve only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Do not involve properties on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless appropriate waivers have been obtained, or which have been designated as unsuitable for mining under 405 KAR 24:030, or any properties eligible for listing on the National Register of Historic Places;

8. Do not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Do not constitute a change in the current method of mining; and

10. Will be reclaimed in conformity with the current reclamation plan.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area, and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, incidental boundary revisions for surface operations and incidental boundary revisions for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area, and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area, and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet.

(c) The application shall include[~~, but shall not be limited to, the information set forth in this paragraph~~]:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those administrative regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised [~~at least once~~] in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in Section 8(5) of this administrative regulation. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

1. The permit number;

2. The geographic location of the permit area;

3. The name and business address of the permittee;

4. A statement that the permittee proposes to change the operator approved in the permit;

5. The names and business addresses of the currently approved operator and the proposed operator;

6. The cabinet address to which written comments may be sent under paragraph (g) of this subsection; and

7. The time available for submission of the comments. [~~by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.~~]

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall [~~may~~] approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this administrative regulation; and

2. Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. [~~For a complete and accurate application,~~]The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection.

2. [~~, except that~~] Periods of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 [~~KAR~~] prevent a decision from being made within the time period specified in this paragraph, then the cabinet shall have additional time, but not to exceed twenty (20) days from the completion of the notice, to issue its decision[~~, but not to exceed twenty (20) days from the completion of the notice,~~] hearing and conference procedures.

(7) Fees. Applications for revisions shall include a basic fee [~~of $375,~~] except that minor field revisions and operator change revisions shall have no basic fee.

(a) The fee for a revision shall be $1,750 for a major revision and $750 for a minor revision.

(b) If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application.[~~, except that~~] No acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, [~~in a form and with content as required by the cabinet~~] and in accordance with this section, and shall include [~~at a minimum~~]:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this administrative regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $750 [~~$375~~];

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of $750 [~~$375~~].

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability under KAR Title 405 for the reclamation of the areas affected by all prior[~~filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior~~] permittees.

Section 23. Amendments. (1) Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit

renewals) of this administrative regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under KAR Title 405 [~~KAR~~].

(2) A fee for an amendments to existing permits shall be submitted to the cabinet as indicated in Section 7(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which [~~is or~~] may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:092, Section 8.

(2) Any applicant or any person with an interest which [~~is or~~] may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 350.0301 and 350.0305 [~~224.085~~] if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet at the time the permit was issued:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; [~~and~~]

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, **August 2010 [**~~November 1991~~**]**;

(b) "Permittee Information for a Mining Permit", MPA-01, **August 2010 [**~~November 1991~~**]**;

(c) "Operator Information for a Mining Permit", MPA-02, **August 2010 [**~~November 1991~~**]**;

(d) "Technical Information for a Mining Permit", MPA-03, **August 2010 [**~~November 1991~~**]**;

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) **[**~~"Application to Revise a Mining Plan, MPA-04, November 1991;~~

~~(h)~~**]** "Update of Permittee or Operator Information", MPA-05, **August 2010 [**~~November 1991~~**]**;

(h)[~~(i)~~**]** "Change of Corporate Owners, Officers or Directors", MPA-06, **August 2010 [**~~November 1991~~**]**;

(i)[~~(j)~~**]** "Application to Transfer a Mining Permit", MPA-07, **August 2010 [**~~November 1991~~**]**;

(j)[~~(k)~~**]** "Revision Application to Change Operator", MPA-08, **August 2010 [**~~November 1991~~**]**;

(k)[~~(l)~~**]** "Application for Renewal of a Mining Permit", MPA-09, **August 2010 [**~~November 1991~~**]**;

(l)[~~(m)~~**]** "Application for a Coal Marketing Deferment", MPA-10, **August 2010 [**~~November 1991~~**]**;

(m)[~~(n)~~**]** "Minor Field Revision Application Form", SME 80, revised **August 2010 [**~~September 1991~~]; and

(n)[~~(o)~~**]** "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED: July 13, 2010

FILED WITH LRC: July 15, 2010 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,

Office of the Commissioner, 2 Hudson Hollow Road, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-6764, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins, Regulations Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation applies to surface coal mining operations and specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits. This administrative regulation also applies to reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to entities interested in the coal permitting process in the Commonwealth of Kentucky. This includes those items listed in question (1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 and 350.465 requires the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. The permitting process is detailed in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information to entities interested in a surface coal mining permit as well as information relating to amendments and timelines for those entities that currently have a surface coal mining permit.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases fees for permitting actions to match legislation passed in the 2010 Legislative Session. This amendment also incorporates by reference Ram #124 and allows it to be introduced as a minor field revision. The amendments in response to comments introduce updated application forms for use in the permitting program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the fee amounts in regulation to match those passed in HB 283 from the 2010 Legislative Session. The amendments in response to comments are necessary to incorporate updated permit application forms.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will introduce the changes to permit fee increases as well as changing a portion of the permitting process by allowing Ram #124 to be an acceptable minor field revision. The amendments conform to the authorizing statutes by the introduction of new permit application forms.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide appropriate updates required by statute as well as introducing more detail to the permitting process. The amendments in response to comments will assist in the administration of the authorizing statutes by providing updated permit application forms which will provide appropriate detail related to permitting information required by the Division of Mine Permits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact surface mines throughout the Commonwealth of Kentucky. There are 415 coal companies in the Commonwealth with inspectable permits. In Fiscal Year 2009 there were 1,187 permitting actions to which these assessments would have been applicable. The ten year average is 1,012.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a new permit, amendment, major revision, minor revision, renewal, or Transfer will be required to pay additional fees matching the amounts indicated in this administrative regulation. The amendments in response to comments will not require the entities in question (3) to take any additional actions. They will simply be required to use new forms when submitting a permit application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is difficult to provide a set cost associated with all entities in the Commonwealth. However, the amounts will be increased to the following amounts.

$2,500 for an original application;

$1,750 for an amendment or major revision;

$750 for a minor revision, renewal or transfer.

There are no costs associated with the incorporation of new permit application forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The increased funding will allow the Division of Mine Permits to hire and retain additional permit reviewers that will increase the rate of permit review. Also the entities listed in question (3) will also be able to introduce RAM #124 as a minor field revision. The entities in question (3) will benefit by using new application forms which will request updated information providing more appropriate information to permit reviewers allowing a more efficient review process.

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

(a) Initially: There will be no costs associated with introduction of new permit fees. However, hiring new employees will result from the increased fee amounts. There will be no costs associated with the introduction of new permit application forms.

(b) On a continuing basis: The costs associated with this amendment on a continuing basis will be related to retaining the permit reviewers hired with the increased fee amounts. There will be no costs associated with the introduction of new permit application forms.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of this administrative regulation will be General Fund and Restricted 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 increase fees to the amounts listed in question (4)(b).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does increase the fees originally contained within this administrative regulation.

(9) TIERING: Is tiering applied? Yes. Tiering was applied by setting different fee amounts depending on the amount of review required for each permitting action.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits 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. HB 283 from the 2010 Legislative Session amended KRS 350.060, 350.070, 350.135, and 350.139.

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 will increase the revenue for the Division of Mine Permits assuming associated General Fund appropriations are maintained at current levels.

(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 could generate approximately $800,000 dollars per year depending on the number of permit applications received.

(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 could generate approximately $800,000 dollars per year on a continuing basis depending on the number of permit applications received.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation will be the result of hiring additional permit reviewers.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation in subsequent years will be related to retaining those permit reviewers hired as a result of the increased permit fees.

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

Revenues (+/-): Revenue will increase by approximately $800,000 annually depending on the number of permit applications received.

Expenditures (+/-): The expenditures will be related to the employees hired as a result of the amendment to this administrative regulation. The costs associated with hiring new personnel is roughly calculated at $480, 100 in fiscal year 2010 and 994,400in fiscal year 2011. Half of this cost will be made up in a 50% federal match.

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060, 350.062, 350.070, and 350.135.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 773-775, 777, and 778.17.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. This administrative regulation charges a fee for permits review. The federal laws do not include a permit fee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth of Kentucky was given the authority to charge fees for permit review by KRS 350.060, 350.070, and 350.135.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2010-2012 State Health Plan [~~2009 Update to the 2007-2009 State Health Plan as amended June 9, 2009~~] shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The 2010-2012 State Health Plan **as amended July 15, 2010** [~~2009 Update to the 2007-2009 State Health Plan as amended June 9, 2009~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 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 TEIRING STATEMENT

Contact Person: Carrie Banahan or Shane P. O'Donley, (502) 564-9589

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.

(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2010 - 2012 State Health Plan by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.

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

(a) How the amendment will change this existing administrative regulation: The amendment will update the 2010 - 2012 State Health Plan.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2009, so the next triennial plan is being prepared for 2010-2012.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) which requires that the State Health Plan be prepared triennially.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

(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 modifications will apply to potential Certificate of Need applicants for Diagnostic and Therapeutic Equipment and Procedures.

(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 entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The criteria for applicants proposing to establish fixed site diagnostic cardiac catheterization has been made less stringent, applicants may now propose to expand their existing diagnostic cardiac catheterization service to also provide primary (emergency) angioplasty services on a 2-year trial basis, and applicants may propose to provide comprehensive (diagnostic and therapeutic) cardiac catheterization services without a comprehensive cardiac surgical program (including open-heart surgery) within the facility. These changes may increase access to cardiac catheterization services to areas of the state that do not currently have these services.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2010 - 2012 State Health Plan by reference.

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? No impact to 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? No revenues will be generated to state or local government.

(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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(Amended after Comments)

910 KAR 1:240. Certification of assisted-living communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793, 2010 Ky Acts Ch. 36

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(2) "Activities of daily living" is defined by KRS 194A.700(1).

(3) "Assisted-living community" is defined by KRS194A.700(4)[~~(3)~~].

(4) "Client", "Resident", or "tenant" is defined by KRS 194A.700(5)[~~(4)~~].

(5) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(6) "Client's designated representative" means a person identified in a document signed and dated by the client or client's guardian or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(7) "Danger" is defined by KRS 194A.700(6)[~~(5)~~].

(8)[~~(7)~~] "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(9)[~~194A.713(1)(a) to be in a lease agreement.~~

~~(8)~~] "Instrumental activities of daily living" is defined by 194A.700(7).

(10) "Licensed healthcare professional" is defined by KRS 216.300(1).

(11) "Living unit" is defined by KRS 194A.700(10).

(12) "Plan of correction" is defined by KRS 194A.700(12).

(13) "Statement of danger" is defined by KRS 194A.700(13).

(14) "Statement of noncompliance" is defined by KRS 194A.700(14).

(15)[~~(9) "Living unit" is defined by KRS 194A.700(8).~~

~~(10)~~] "Temporary [~~health~~] condition" means a condition that affects a client as follows:[~~and for which health services are being provided as referred to in KRS 194A.711; and~~]

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager or employee of the assisted-living community; and the assisted-living community has written plan in place to ensure that the client is not a danger; or

(b)1. The client loses mobility after entering a lease agreement;

2. The client[~~and~~] is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger[~~recover and the provided health services are hospice or similar end-of-life services~~].

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, [~~within~~] at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11)[~~194A.715(1)(c)~~];

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8)[~~(6)~~];

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:

(a) Calculating the fee for a year by computing twenty (20) dollars per living unit or the $300 minimum set forth in KRS 194A.707(8)[~~(6)~~], whichever is greater, but no more than the $1,600 maximum set forth in KRS 194A.707(8)[~~(6)~~];

(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee; and

(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee required by Section 2(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit prorated in accordance with Section 2(2) of this administrative regulation.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an **announced** on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an**[**~~announced or~~**]** unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c)[~~within one (1) year of receipt of the DAIL-ALC-1, Assisted-Living Community Certification Application~~].

Section 7. On-Site Review of an Assisted-Living Community. (1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. Completion of employee orientation:

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(c)[~~:~~

~~(i) Pursuant to KRS 194A.719; and~~

~~(ii) Provided on an annual basis;~~

~~(b)~~] Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(d)[~~(c)~~] Review of client records including:

1. A completed client functional needs assessment:

a. To ensure that the client met the eligibility requirements for assisted-living pursuant to KRS 194A.705(5); and

b. In which a copy was provided to the client upon move in pursuant to KRS 194A.705(5)(a)[~~194A.711 prior to finalizing a lease agreement~~];

2. An initial and at least annual[~~A~~] functional needs assessment;

a. That reflects a client's [~~ongoing~~] ability pursuant to KRS 194A.705(5)[~~194A.711~~] to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current personal preferences and social factors; [~~and~~]

4. A signed lease with all attachments;

5. Documentation of a client's designated representative, if applicable; and

6. Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation polices pursuant to KRS 194A.719(1)(d);

(e)[~~(d)~~] Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(f)[~~(e)~~] Review of an assisted-living community's written service provision and practices related to:

1. Provisions of KRS 194A.705 **which, in the case of medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but not exceed the following staff actions if the client requests assistance:**

a. Providing the client with a medication reminder;

b. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

c. Opening the medication container or dosage package, but not handling or removing the medication;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service [~~pursuant to KRS 194A.711~~]:

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary [~~health~~] condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), [~~194A.715(1)(c),~~] 194A.719(1)(j)[~~(10)~~], and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's [~~ongoing~~] abilities as specified in paragraph (d)[~~(c)~~]2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

(g)[~~(f)~~] Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10)[~~(7)~~].

(3) The department may, pursuant to KRS 194A.707(10)[~~(7)~~], request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Assisted-living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Non-compliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Non-compliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the:

a. Department; and

b. The assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 11 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 9(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10)[~~(7)~~].

Section 9. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 8(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living

community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 8(9) of this administrative regulation:

1. Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

a. Email;

b. Facsimile transmission;

c. Delivery to the department by hand;

d. United States mail; or

e. Courier service; or

2. Within forty eight (48), unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

(i) Email;

(ii) Facsimile transmission;

(iii) Delivery to the department by hand;

(iv) United States mail; or

(v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 11 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 11 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723(1).

(b) The fine shall be paid as specified in Section 10(1) of this administrative regulation.

Section 10. Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to 2010 Ky Acts Ch. 36, sec. 12 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be $250.

Section 11. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection 5(b) of this section, not to exceed an additional fifteen (15) days.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", edition 7/10[~~11/07~~];

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", edition 7/10[~~2/09~~];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 2/09; and

(d) "DAIL-ALC-4, Statement of Danger, edition 2/09.

(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.

DEBORAH S. ANDERSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 7, 2010

FILED WITH LRC: July 8, 2010, at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930 extension 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for certification of assisted-living communities.

(b) The necessity of this administrative regulation: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 194A.050(1) which states the secretary shall promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation provides an initial and annual certification review process for assisted-living communities pursuant to KRS 194.707(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

(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 after comments regulation clarifies that initial certification reviews shall be announced and other certification reviews shall be unannounced. The amendment also sets forth requirements for assisted-living communities to provide assistance with self-administration of medications for other types of medicine containers than preset or single dose units.

(b) The necessity of the amendment to this administrative regulation: The Cabinet agrees with the commenter's that more clarity is needed in the regulation for the assisted-living community's understanding of announced and unannounced certification reviews and self-administration of medications for containers that are not preset or in single dose units.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments regulation conforms to KRS 194A.707(1) which authorizes the Cabinet to establish certification reviews for assisted living communities.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments regulation will clarify the Department's process for certification reviews in accordance with KRS 194A.707(2) and review of self-administration of medication in accordance with KRS 194A.700(3).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 94 assisted-living communities throughout the state and the Department for Aging and Independent Living affected by this amended after comments 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 assisted-living communities, in case of medications not preset in a medication organizer or single dose unit container, may include but not exceed the following staff actions if requested by the client:

1. Provide the client with a medication reminder; read the medication's label to the client and confirm that the medication is being taken by the client for whom it is prescribed; and open the medication container or dosage package, but not handle or remove the medication; and

2. Understand that the initial certification review will be announced and other certification reviews thereafter will be unannounced. The department will conduct an announced certification review initially and an unannounced certification review thereafter; and review the assisted-living community's services provisions during a certification review for compliance with the following. Handling medications that are not preset in a medication organizer or single dose unit container. Provide the client with a medication reminder; Read the medication's label to the client and confirm that the medication is being taken by the client for whom it is prescribed; and Open the medication container or dosage package, but not handle or remove the medication.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost to assisted-living communities or the Department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The assisted-living communities will better understand the criteria for certification and the certification review process and self administration of medications that are not preset or in a single dose unit.

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

(a) Initially: FY 10 - $201,020.87

(b) On a continuing basis: FY 11 - $201,020.87 approximately

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds from certification fees of $107,362.24 and additional general funds necessary to operate the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The fees in this administrative regulation are governed by KRS 194A.707(6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes certification fees within the provisions found in KRS 194.707(6).

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living

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) and 194A.707(1).

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

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

(c) How much will it cost to administer this program for the first year? FY 10 - $201,020.87.

(d) How much will it cost to administer this program for subsequent years? Approximately $201,020.87 for FY 10.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amendment)

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

RELATES TO: KRS 141.010(22), 141.020, 141.310, 141.315, 341.020, 341.090, 341.395, 26 U.S.C. 3402(q)

STATUTORY AUTHORITY: KRS 141.050(4), 141.310(8), 141.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.310(8) allows the department to provide by administrative regulation for withholding in addition to that otherwise provided in KRS 141.310 and 141.315 in cases in which the employer and employee agree to additional withholding. KRS 141.315 requires the department to promulgate administrative regulations governing certain specified types of payments. This administrative regulation prescribes procedures for withholding income tax on gambling winnings, supplemental wages, [~~and~~]vacation pay, and unemployment benefits.

Section 1. Definitions. (1) "Benefits" are defined by KRS 341.020(4).

(2) "Benefit Year" is defined by KRS 341.090(3).

(3) "Cabinet" means the Education and Workforce Development Cabinet.

(4) "Department" is defined by KRS 141.010(2).

(5) "Fund" is defined by KRS 341.020(1).

(6) "Gambling winnings" means winnings that are subject to withholding as defined by 26 U.S.C. 3402(q) of the Internal Revenue Code.

(7)[~~(2)~~] "Supplemental wages" means payments made to an employee by the individual's employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a payment of gambling winnings shall deduct and withhold from the payment Kentucky income tax at the maximum tax rate provided in KRS 141.020.

Section 3. Supplemental Wages. If supplemental wages are paid at the same time as regular wages, the tax to be withheld shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at a different time, the employer shall determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year.

Section 4. Vacation Pay. If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be subject to withholding as though it were a regular wage payment made for the payroll period or periods which occur during the vacation. If vacation pay is paid in addition to regular wages to an employee who forgoes his vacation, the payments shall be treated as supplemental wages.

Section 5. Unemployment Benefits. (1) An individual filing a new claim for benefits shall, at the time of filing such claim, be advised by the cabinet that benefits are subject to federal and state income tax, requirements exist pertaining to estimated tax payments, and the individual may elect to have the tax imposed by KRS 141.020 deducted and withheld from the individual's benefits at the rate of four (4) percent.

(2) The individual making an election under subsection one (1) of this section shall be permitted to change a previously elected Kentucky withholding status one (1) time during the individual's benefit year.

(3) The amounts deducted and withheld from benefits pursuant to subsection one (1) of this section shall remain in the unemployment insurance fund until transferred to the department as a payment of income tax. If two (2) or more deductions are made from an individual's benefits, then the deductions shall be deducted and withheld in accordance with priorities established by the cabinet.

(4) The cabinet shall follow all procedures pertaining to the deducting and withholding of income tax from benefits by the department, the United States Department of Labor, and the Internal Revenue Service.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD:A public hearing on this administrative regulation shall be held on August 23, 2010, from 10 a.m. to noon 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 this hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: DeVon Hankins, (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows an individual to elect to have Kentucky income tax deducted and withheld from the individual's unemployment benefits at the rate of 4%.

(b) The necessity of this administrative regulation: This administrative regulation will enable individuals receiving unemployment benefits to have Kentucky income tax withheld from unemployment benefits as they are received. This will help prevent a large Kentucky tax liability from being due when their Kentucky income tax return is filed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) provides that the Department of Revenue may promulgate administrative regulations necessary to effectively carry out the provisions of KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow an individual to elect to have Kentucky income tax deducted and withheld from the individual's unemployment benefits received at the rate of four 4%. This amended regulation will benefit the individual since it will alleviate the need to make Kentucky estimated tax payments. This amended regulation will benefit the Commonwealth of Kentucky since the collection of tax revenues due on unemployment compensation will be accelerated.

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

(a) How the amendment will change this existing administrative regulation: This amendment will add new language to the existing regulation to allow an individual receiving unemployment benefits to elect to have Kentucky income tax deducted and withheld from

those benefits. Currently, there is no administrative regulation that provides for withholding of Kentucky income tax from unemployment benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because during the current recession many Kentucky residents are receiving unemployment benefits and are often unaware that tax will be due when they file their annual Kentucky income tax returns.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 141.050(4), 141.310(8), and 141.315(4) which authorizes the Department of Revenue to promulgate needed administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an individual receiving unemployment benefits an option to elect to have Kentucky income tax withheld from their benefits, thereby eliminating the individual's need to make Kentucky estimated tax payments, and ameliorate the balance of tax due when filing the individual's Kentucky income tax return.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals receiving Kentucky unemployment benefits 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: Individuals identified in question (3) will have an option to elect to have Kentucky income tax withheld from their Kentucky unemployment benefits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The individuals identified in question (3) will not incur any additional cost as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals identified in question (3) will have the option to have Kentucky income tax withheld from their unemployment benefits which will eliminate the need to make Kentucky estimated income tax payments and will ameliorate the balance of tax due when filing their annual Kentucky income tax returns.

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

(a) Initially: There will be a minimal cost initially in the administrative process for the Department of Revenue associated with notifying taxpayers of this administrative regulation.

(b) On a continuing basis: There will be no additional cost for the Department of Revenue on a continuing basis as a result of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all individuals receiving Kentucky unemployment benefits.

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 Finance and Administration Cabinet, Department of Revenue, and the Education and Workforce Development Cabinet 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 141.050(4), 141.310(8), and 141.315(4) authorize 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 small increase in expenditures for the Department of Revenue will occur in the administrative process and to notify taxpayers of this administrative regulation.

(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? Unknown fiscal impact in the first full year this regulation is to be in effect, however this administrative regulation may accelerate the collection of individual income tax.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown fiscal impact in subsequent years, but this administrative regulation may also accelerate the collection of individual tax in subsequent years.

(c) How much will it cost to administer this program for the first year? A very small administrative increase in expenditures will occur in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? No costs for subsequent years.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505(36), (37), (38), 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34), (35), (36), 78.545(26), 26 U.S.C. sec. 414(p)[~~16.505-16.652, 61.510-61.705, 78.510-78.852~~]

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.690[~~(f)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.690 requires the retirement systems to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDORs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs[~~(3) requires the retirement systems to honor qualified domestic relations orders which comply with the policy of the Board of Trustees established by this administrative regulation~~].

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36)[~~means an individual who is named in a qualified domestic relations order to receive a portion of the member's retirement benefits~~].

(2) "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35)[~~(QDRO) means a court order issued incident to an annulment, separation or divorce which establishes an alternate payee's rights to a portion of the member's benefit~~].

(3) "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

Section 2. The provisions of this section shall only apply to QDROs that were approved by the retirement systems for enforcement prior to July 14, 2000. After the participant notifies the retirement system of the participant's requested effective retirement date, the retirement systems shall administer a QDRO that was entered prior to the participant's retirement as follows:

(1) The retirement systems shall send the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:

(a)[~~A QDRO shall be accompanied by a statement from counsel that the QDRO is current and not superseded by a subsequent QDRO and shall contain the following:~~

~~(1) Certification by the clerk of the circuit court in which the QDRO was entered;~~

~~(2) The name, Social Security number and last known mailing address of the member and the alternate payee;~~

~~(3) The date of marriage and the date of decree of dissolution of marriage;~~

~~(4) The correct name of the system or systems to which it applies;~~

~~(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the alternate payee or the specific amount to be paid to the alternate payee; and~~

~~(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's retirement, death or withdrawal from the system and whether the percentage pertains to the benefits attributable to the period of marriage, the member's entire period of employment or other specified period.~~

~~Section 3. If the retirement system determines that a QDRO does not meet the requirements of Section 2 of this administrative regulation, the retirement system shall do the following:~~

~~(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO is not in compliance and will not be followed and the necessary changes to be made to the QDRO to bring it into compliance.~~

~~(2)(a) If the member is retired, the general manager shall direct the percentage or amount of benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the member's retirement allowance and placed in abeyance until the QDRO is amended.~~

~~(b) If the QDRO is not amended to comply with this administrative regulation within eighteen (18) months from the date the QDRO was first received, the percentage or amount of the member's retirement allowance held in abeyance shall be restored to the member's account and paid to the member.~~

~~(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and determined to be in compliance shall only be applied prospectively.~~

~~Section 4. A QDRO shall not be effective until received by the retirement system and shall apply only to those monthly retirement allowances that have not been processed by the retirement system by the date of receipt.~~

~~Section 5. If the QDRO is received prior to the member's retirement, then upon the member's retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of the benefits payable under the QDRO which shall be calculated as follows:~~

~~(1) The benefit payment shall be divided between the member and the alternate payee as follows:~~] The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant[~~member~~] by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's[~~member's~~] total service credit. The participant[~~member~~] shall be paid all amounts in excess of the amounts paid to the alternate payee.

(b)[~~(2)~~] If a lump sum payment equal to balance of the participant's[~~member's~~] account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the participant's[~~member's~~] account and the result paid to the alternate payee. The participant[~~member~~] shall be paid all amounts in excess of the amounts paid the alternate payee.

(c)[~~(3)~~] If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the participant's[~~member's~~] basic option.

(d)[~~(4)~~] Service added for disability under KRS 61.605 or KRS 16.582 shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this subsection.

(e)[~~(5)~~] The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the member's is eligible, the ten (10) year certain option as proved by KRS 16.576(5).

(f)[~~(6)~~] If the alternate payee predeceases the participant[~~member~~] after the participant's[~~member's~~] retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee shall be paid to the alternate payee's estate.

(g)[~~(7)~~] The alternate payee of a QDRO approved for enforcement by the retirement systems prior to July 14, 2010, shall receive [~~a pro rata share of any~~] increases given recipients under KRS 61.691.

(3)[~~Section 6. (1)~~] If the participant[~~member~~] dies prior to retirement and prior to the death of the alternate payee, the participant's[~~member's~~] account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(4)[~~(2)~~] If the death benefit is a refund of the participant's[~~member's~~] contribution account, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's[~~member's~~] account calculated in accordance with subsection (2) of this section[~~Section 5 of this administrative regulation~~].

(5)[~~(3)~~] If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment or an actuarial lump sum payment.

(6)[~~Section 7. If the QDRO is received after the member's retirement, then the alternate payee shall receive the percentage or amount of the member's retirement allowance as stated in the QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms of the payment option previously selected by the member or until the death of the alternate payee.~~

~~Section 8.~~] If the alternate payee dies prior to the participant's[~~member's~~] death, retirement or withdrawal of account, no payment shall be made to the alternate payee.

(7)[~~Section 9.~~] When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee which shall consist of the alternate payee's pro rata share of the participant's[~~member's~~] contributions, service and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant[~~member~~].

Section 3. (1) All sections of this administrative regulation, except for Section 2, shall only apply to QDROs approved for enforcement by the retirement systems on or after July 15, 2010.

(2) A QDRO shall apply to all retirement systems administered by the retirement systems as established by KRS Chapters 16, 61, and 78 in which the participant is a member during the period of the marriage that is the subject of the QDRO and from which the participant will receive retirement benefits.

(3) A QDRO shall contain the following information:

(a) The participant's name;

(b) The participant's mailing address;

(c) The participant's Kentucky Retirement Systems member identification number;

(d) The alternate payee's name;

(e) The alternate payee's mailing address;

(f) The system or systems to which the QDRO applies;

(g) The amount or percentage to be paid to the alternate payee;

(h) When payments under the QDRO are to end;

(i) How the cost of living increase provided in KRS 61.691 is to be administered; and

(j) All information required on the form that applies to the subject matter of the order:

1. Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property;

2. Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

3. Form 6436,Qualified Domestic Relations Order for Child Support;

4. Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

5.Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 4. (1) The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for a Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO.

(a) The participant shall provide the retirement systems with the following information:

1. The participant's and the alternate payee's social security numbers;

2. The participant's and the alternate payee's dates of birth;

3. Date of marriage;

4. Date of divorce;

5. The participant's and the alternate payee's mailing addresses; and

6. The addresses of the participant's and the alternate payee's legal counsel, if any.

(2) If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:

(a) Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;

(b) Total number of months of service credit on file at the systems as of the effective date of the divorce and at the time of the request in each system in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;

(d) The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service; and

(e) The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service.

(f) The retirement systems shall use the participant's final compensation as of the date of the divorce and the service credit accrued by the participant during the marriage when calculating the participant's projected, estimated basic monthly retirement allowance and the projected, estimated actuarial refund or lump-sum refund payment.

(3) If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:

(a) Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;

(b) The total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and

(c) The total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.

(4) If information other than the information supplied by the retirement systems in accordance with subsections (2) and (3) of this section is required then the participant shall send an additional request for information in writing or the court shall issue a subpoena or an order requesting the additional information.

Section 5. (1) A QDRO shall be on the form incorporated by reference that applies to the subject matter of the order.

(2) A QDRO shall be signed by the judge of a court with jurisdiction over the case or by the head of the administrative agency with statutory authority to issue a QDRO.

(3) A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency with statutory authority to issue a QDRO.

(4) The participant, alternate payee, or their legal counsel shall submit the entered and certified QDRO to the retirement systems. A copy of the QDRO signed by the Judge and entered by the Clerk of the Court may be submitted if the copy is certified by the Clerk of the Court.

(5) The participant, alternate payee, or their legal counsel shall not submit a QDRO that is before an appellate court and is not final.

(a) The retirement systems shall have no responsibility or liability for payments made pursuant to a QDRO that was submitted in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(6) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of $50 made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the QDRO. The retirement systems shall not review the QDRO unless the fee is submitted with the QDRO.

(a) The court shall order who is to pay the fee. The court may order that the fee be divided between the participant and the alternate payee. Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis then the retirement systems may waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified QDRO.

(7) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date of the retirement systems' notification of the deficiency as provided in Section 6(4) of this administrative regulation to submit a corrected QDRO. If a corrected QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit a nonrefundable fifty (50) dollar fee with a QDRO submitted after ninety (90) days.

Section 6. (1) The retirement systems shall determine if the QDRO is complete and qualifies as a QDRO pursuant to KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation. A QDRO shall not be effective until the retirement systems has determined that it complies with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation and has approved the QDRO for enforcement. The retirement systems shall provide notification of its determination within 90 days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011. The retirement systems shall provide notification of its determination within forty-five (45) days of the submission of the QDRO after July 15, 2011.

(2) The retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the retirement systems shall place the QDRO on file until the participant files a notification of retirement or an application for refund.

(b) If the participant has retired, the retirement systems shall begin to enforce the QDRO the month after it is approved for enforcement by the retirement systems.

(3) The alternate payee shall submit a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO. If the alternate payee has not submitted a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by

Check, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the retirement systems shall segregate and hold the alternate payee's payments until the alternate payee has submitted the required form.

(4) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation, the retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that:

(a) The retirement systems has determined the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation;

(b) The reason for the determination that the QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation; and

(c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation.

Section 7. (1) If a QDRO approved for enforcement and on file at the retirement systems is amended or terminated, the participant, alternate payee, or their legal counsel shall submit the amended entered and certified QDRO or a entered and certified order terminating the QDRO to the retirement systems as provided in Section 4 of this administrative regulation.

(2) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The retirement systems shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis then the retirement systems may waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified QDRO.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The retirement systems shall review the amended QDRO using the same procedures found in Section 6 of this administrative regulation.

(4) If the retirement systems determines that the amended QDRO does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation or the order terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date of the retirement systems' notification of the deficiency as provided in Section 6(4) of this administrative regulation to submit a corrected amended QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a corrected order terminating the QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit a nonrefundable twenty-five (25) dollar fee with an amended QDRO or order terminating the QDRO that is submitted after ninety (90) days.

(5) An amended QDRO approved by the retirement systems shall only be administered prospectively.

Section 8. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.

Section 9. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property.

(2) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. The alternate payee shall not receive a retirement benefit if the participant is not receiving a retirement benefit.

Section 10. (1) The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount if the participant elects a monthly retirement benefit or as a one (1) time lump sum dollar payment if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the time of the participant's retirement, or as a lump sum dollar payment from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625;

(b) As a percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which may be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage;

2. The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest;

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee;

Section 11. (1) The provisions of this section shall only apply to participants whose membership date is prior to August 1, 2004. If a participant whose membership date is prior to August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1)(a) of this administrative regulation, the retirement system will pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(1)(b) of this administrative regulation, the retirement systems shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a) or 61.605(1) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued,

the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 12. (1) The provisions of this section shall only apply to participants whose membership date is on or after August 1, 2004. If a participant whose membership date is on or after August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582. 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as provided in Section 11(1)(b) of this administrative regulation.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 13. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

Section 14. (1) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount;

(b) As a percentage of the participant's selected monthly retirement benefit pursuant to KRS 61.595, which may be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchased during the marriage;

2. The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option;

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee.

Section 15. (1) If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. sec. 414(p), or this administrative regulation, the retirement systems shall:

(a) The retirement systems shall segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation.

(b) The retirement systems shall hold the segregated amount for a period of no more than eighteen (18) months;

(c) If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation within eighteen (18) months the retirement systems shall pay the segregated amount to the alternate payee;

(d) If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation after eighteen (18) months the retirement systems shall pay the segregated amount to the participant;

(e) The eighteen (18) month time period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation;

(f) If after eighteen (18) months a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. sec. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively.

(2) The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.

Section 16. (1) A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(2) The amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(3) An alternate payee on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.

(4) The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.

Section 17. (1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

(2) The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(3) The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.

Section 18. (1) The participant is responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

(2) The retirement systems shall hold any payments due the alternate payee pending submission of proof of the event which causes payments to the alternate payee to end is provided by the participant beginning the month after the retirement systems' receipt of the participant's written notification.

(3) The participant shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event which causes the participant's alimony/maintenance to end.

(4) The participant shall submit a copy of the alternate payee's death certificate or other reliable documentation as proof of the event which causes the participant's payments pursuant to the division of marital property to end.

(5) The participant is not required to submit written notification

if the QDRO specifies the number of months of payments.

(6) If proof is not submitted within ninety (90) days of the written notification to the retirement systems the payments being held shall be released to the alternate payee.

(7) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 19. (1) The participant is responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)(a) If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.

(b) The retirement systems shall segregate and hold the payments due to the alternate payee under a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant submits an order changing the custody of the child to someone other than the alternate payee, a copy of the child's marriage certificate, a letter from the child's high school indicating the child's graduation date, the child's birth certificate, an order of emancipation of the minor child, or the child's death certificate;

1. If the QDRO for child support is for the support of more than one (1) child, the retirement systems shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not submit an order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within ninety (90) days of the participant's submission as provided in subsection (2)(b) of this section the payments being held shall be released to the alternate payee.

(3) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, or the court order that causes payments to the alternate payee to end or be amended.

Section 20. (1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support;

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they will be administered in the order of approval by the retirement systems.

(3) If multiple QDROs for Child Support are on file, they will be administered in the order of approval by the retirement systems.

(4) If multiple QDROs for Alimony/Maintenance are on file, they will be administered in the order of approval by the retirement systems.

(5) If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.

(6)(a) If the total amount of the payments due to alternate payees under the QDROs being administered on the participant's account exceeds the amount of the participant's monthly retirement benefit, the retirement systems shall notify the participant and alternate payees under the QDROs that the QDROs cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

(b) The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.691.

Section 21. The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall have no duty or obligation to search for or locate an alternate payee.

Section 22. A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.

Section 23. (1) If the participant's retirement benefit is corrected pursuant to KRS 61.685 the alternate payee's payment shall also be corrected.

(2) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685 the retirement systems shall withhold the amount of the overpayment from the alternate payee's payment.

(3) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685 the retirement systems shall pay the alternate payee a lump sum payment of the additional funds due.

Section 24. Any person who attempts to make the retirement systems a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to the participant pursuant to a QDRO may petition the court for payment of the retirement systems' costs and legal fees.

Section 25. (1) Any person or party who requests a subpoena be issued for the personal appearance of a representative of the retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO shall reimburse the retirement systems for the travel expenses and services of the retirement systems' representative, or representatives, and the retirement systems' legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the retirement systems' personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the retirement systems' employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office; and

(e) Hotel/lodging expenses, if necessary.

(2) The retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment for the estimated expenses before the date of appearance ordered in the subpoena.

(b) The retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 26. Neither the retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004;

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", July 2010;

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", July 2010;

(d) Form 6436, "Qualified Domestic Relations Order for Child

Support", July 2010;

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", July 2010;

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", July 2010;

(g) Form 6130, "Authorization for Deposit of Retirement Payment", April 2010;

(h) Form 6135, "Payment of Retirement Payment by Check" February 2002; and

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.[~~Section 10. The payment options shall be offered to the alternate payee on an Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.~~]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 20, 2010

FILED WITH LRC: July 15, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2010 at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall 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 this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a qualified domestic relations order (QDRO).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010. The procedures for administering QDROs approved for enforcement prior to July 14, 2000, are inconsistent with the amendment to KRS 61.690 effective July 14, 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010. The procedures for administering QDROs approved for enforcement prior to July 14, 2000, are inconsistent with the amendment to KRS 61.690 effective July 14, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 61.690 by establishing the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is assist in the effective administration of the statutes by establishing the procedures and incorporating the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants and alternate payees who divorce and have divided the retirement benefit pursuant to a property settlement or court order, participants paying maintenance pursuant to KRS 403.200 to an alternate payee, participants paying child support to an alternate payee.

(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 submit an entered court order on the form incorporated into 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 is a $50 fee for filing a QDRO and a $25 fee for amending a QDRO. The fee is paid by participant, alternate payee, or divided between them in accordance with the order of the court. There is no fee for child support QDROs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The retirement benefit will be divided in accordance with the court order. The alternate payee will receive the payments due under the court order.

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

(a) Initially: The cost to Kentucky Retirement Systems of implementing this administrative regulation cannot be estimated because the demands on staff time and agency resources cannot be

anticipated. It is anticipated that the fees provided for by this amendment to the administrative regulation as authorized by statute will offset some of this cost.

(b) On a continuing basis: There is no continuing cost other than normal administrative costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds) and the fees paid for filing and amending of QDROs.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645, 61.690.

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? The cost for initial implementation is unknown.

(d) How much will it cost to administer this program for subsequent years? There is 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
Department of Military Affairs
Military Family Assistant Trust Fund Board
(Amendment)

106 KAR 2:020. Military Family Assistance Trust Fund.

RELATES TO: KRS 36.470, 36.474, 36.476

STATUTORY AUTHORITY: KRS 36.474(3), (5)

NECESSITY, FUNCTION AND CONFORMITY: KRS 36.470 establishes the military family assistance trust fund. KRS 36.474(3), (5) require the board to promulgate an administrative regulation establishing the maximum amount of grant assistance a person may receive in a twelve (12) month period and to establish a need-based application for trust fund grants. This administrative regulation establishes the application process and the maximum amount of grant assistance as required by KRS 36.474.

Section 1. Military Family Assistance Trust Fund Board. The board shall receive a report on all funds expended on applications and shall be informed on the reason for any application being disapproved.

Section 2. Application for Trust Funds. Any qualified service member or the service member's Kentucky resident spouse may submit a "Kentucky Military Family Assistance Trust Fund Application, DMA Form 43-1" for application of grant funds for a need-based emergency.

Section 3. Payment of Grants. (1) Except as provided in subsection (2) of this section, the following limits shall apply:

(a) A maximum of $2,500 may be approved for a single application as identified on DMA Form 43-1; and

(b) A maximum of $10,000[~~$5,000~~] may be approved per fiscal year per service member. An award made to the family of a service member shall be included in the amount calculated as awarded to the service member.

(2) Amounts greater than the $10,000[~~$2,500 single application cap and $5,000~~] fiscal year maximum cap may be approved by a majority vote of the board members if there is:

(a) A catastrophic event, including a tornado, fire, earthquake, or other disastrous event; or

(b) At least a twenty-five (25) percent loss of annual income by the service member or spouse that is caused by the deployment compared to what the service member's or spouse's annual income was prior to deployment.

(3) The applicant shall submit appropriate documentation to verify;

(a) The applicant's financial need; and

(b) Other assistance that is provided or not provided by other sources.

Section 4. Incorporation by Reference. (1) "Kentucky Military Family Assistance Trust Fund Application, DMA Form 43-1", 1 May 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, or by calling the Office at phone (502) 607-1156 or (502) 607-1738, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director,
JUDY GREENE-BAKER, COL (USAR), Chair of Board
EDWARD W. TONINI, MAJ. GEN., The Adjutant General

APPROVED BY AGENCY: July 12, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2010 at 2 p.m. at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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 August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone fax number is 502-607-1240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mr. Steven P. Bullard, 502-607-1738

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation

establishes guidance for the establishment of the Military Family Assistance Trust Fund and its governing board. It provides eligibility and basic criteria for applying for and granting funds to approved applicants. It additionally provides guidance for required reports that are to be submitted.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes how the board members will be appointed, the term limits of the board, and the internal workings and timeliness of board meetings and required actions. It additionally provides guidance on the eligibility and grant caps for recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Military Family Assistance Trust Fund Board and the Adjutant General in the execution of this program for approving applications, as well as providing guidance on reporting procedures.

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

(a) How the amendment will change this existing administrative regulation: This amendment raises the annual financial grant limit from $2,500 per case and $5,000 per year (per claimant) to $10,000 per case and per year.

(b) The necessity of the amendment to this administrative regulation: The board members of the Military Family Assistance Trust Fund voted in May 2010 to raise the annual financial grant limit, requiring an amendment to this administrative regulation. This amendment provides greater flexibility to the board to respond to needs of Kentucky-resident Reserve Component military members and their families. The initial limits were codified through the administrative regulation process and the proposed change also requires codification.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation provides guidance on the eligibility and grant caps for recipients. It also establishes how the board members will be appointed, the term limits of the board, and the internal workings and timeliness of board meetings and required actions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides formal guidance to current and future board members and to qualifying military members and their families as to how expenditures from the trust fund may be allocated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation is written to provide guidance in assisting spouses and dependents of service members who are deployed to provide emergency funds to alleviate undue financial hardships as a direct result of mobilization of the service member. This trust fund is to be used as a last resort when all other reasonable steps have been utilized for assistance.

(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 is required of any entity. However, the Kentucky National Guard and U.S. military Reserve Components (Army Reserve, Navy Reserve, Marine Corps Reserve, Coast Guard Reserve) are publicizing the availability of this program, and the recent changes enacted by the Kentucky General Assembly and proposed by the board in this Administrative Regulation revision, to eligible military personnel and their families through multiple internal military channels.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation allows for the establishment of guidance on how to execute this trust fund in assisting the service member and his/her family in the resolution of any undue hardship generated as a result of mobilization.

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

(a) Initially: Initially this program was funded $500,000 in each year of the SFY 07-08 biennium per 2006 GA HB 380 (Ky. Acts ch. 252) as an additional funding increase for the Department of Military Affairs.

(b) On a continuing basis: In SFY 08 $500,000 was recovered from the trust fund as part of the Department of Military Affairs' SFY 2008 Budget Reduction. The remaining $500,000 (approximate) balance remains adequate to cover anticipated grant requests for the SFY 2011-12 biennium and, most likely, the SFY 2013-14 biennium.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional funding, if required, may be appropriated by future Kentucky General Assembly action.

(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: Per 5(b) above, no increases are required at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased (none are associated with the trust fund).

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Department of Military Affairs, which administers the Military Family Assistance Trust Fund through its Division of Administrative Services at Boone National Guard Center, Frankfort, KY.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 36.470 (Overview), KRS 36.472 (Board), KRS 36.474 (Eligibility), KRS 36.476 (Annual Report).

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?

Historical cost to administer this program is approximately $8,000 in SFY 2010 DMA personnel administrative costs. The proposed changes to this administrative regulation will have little to no impact on that cost.

(d) How much will it cost to administer this program for subsequent years? Expectation is that administrative costs will remain consistent from year to year, currently approximately $8,000 annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABIENT
Board of Nursing
(Amendment)

201 KAR 20:056. Advanced practice registered nurse licensure[~~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 licensure[~~registration~~] of an advanced practice registered nurse [~~practitioner~~]. This administrative regulation establishes the requirements for licensure[~~registration~~], renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure[~~registration~~] as an advanced practice registered nurse [~~practitioner~~] in Kentucky shall:

(1) Complete an "Application for Licensure[~~Registration~~] as an Advanced Practice Registered Nurse[~~Practitioner~~]" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(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.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

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 practice 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 licensure[~~registration~~] as an advanced practice registered nurse [~~practitioner~~] completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse [~~practitioner~~] designation.

(b) If the applicant for licensure[~~registration~~] as an advanced practice 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 practice registered nursing [~~practice~~].

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered 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 consistent with the population focus required by and defined by KRS 314.011;

(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 except as limited by subsection (3)(a) of this section;

(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; and

(g) American Academy of Nurse Practitioners[~~;~~

~~(h) American Association of Critical-Care Nurses Certification Association; and~~

~~(i) Oncology Nursing Certification Corporation~~].

(3) The board recognizes the following national certifying organizations only for those individuals who received certification prior to July 15, 2010 and who have continually renewed their advanced practice registered nurse license since that date or who were enrolled in a program leading to certification prior to October 1, 2010 and after becoming licensed have continually renewed their advanced practice registered nurse license:

(a) American Nurses Credentialing Center's Acute Care Nurse Practitioner certification;

(b) American Association of Critical Care Nurses Certification Association; and

(c) Oncology Nursing Certification Corporation.

Section 4. Practice Pending Licensure[~~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 observa-~~

~~tion 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 practice 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 practice registered nurse [~~practitioner~~] for a period of time not to exceed the expiration date of the temporary work permit.

(2)[~~(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.

(3)[~~(4)~~] An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN[~~ARNP~~] Applicant" or "APRN[~~ARNP~~] App.".

Section 5. License[~~Registration~~] Renewal. (1) The advanced practice registered nurse license[~~practitioner registration~~] shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license[~~registration~~] as an advanced practice registered nurse [~~practitioner~~], the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "ARPN License[~~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 practice 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 practice 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 practice registered nurse license[~~practitioner registration~~] has been reinstated.

(4) An advanced practice registered nurse [~~practitioner~~] shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License[~~Registration~~] Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license[~~practitioner registration~~] as prescribed by KRS 314.042 and this[~~applicable law and~~] administrative regulation, the license[~~registration~~] shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license[~~practitioner registration~~], the applicant shall:

(a) Submit a completed "Application for Licensure[~~Registration~~] as an Advanced Practice 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.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice 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 licensure[~~registration~~] period.

(b) The board shall conduct an audit to verify that an advanced practice 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 practice registered nurse [~~practitioner~~] until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced practice 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 practice 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 practice registered nursing [~~practice~~]; or

(2) An advanced practice 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 be licensed[~~register~~] as an advanced practice registered nurse [~~practitioner~~] if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse [~~practitioner~~] who is not licensed[~~registered~~] as an advanced practice registered nurse [~~practitioner~~] by the board, an advanced practice registered nurse [~~practitioner~~] whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse [~~practitioner~~] who does not recertify and continues to practice as an advanced practice registered nurse [~~practitioner~~] shall be subject to the disciplinary procedures set in KRS 314.091.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for advanced registered nurse practitioner regulation, requirements for ARNP programs, and recognition of national certifying organizations for ARNPs.

(b) The necessity of this administrative regulation: The board is required by statute to set these requirements.

(c) How this administrative regulation conforms to the content of the authorizing 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 changes the title "Advanced Registered Nurse Practitioner" to "Advanced Practice Registered Nurse"; changes registration to licensure; and recognizes that certification must be in a population focus.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All present and future APRNs. Currently, there are approximately 3,800.

(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: Current APRNs will not need to take any action other than to change their titles. Future APRNs will have to conform to the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: It is impossible to estimate the cost to the agency to implement the changes.

(b) On a continuing basis: Unknown

(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 is needed.

(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 314.131.

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? 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? Unknown

(d) How much will it cost to administer this program for subsequent years? Unknown

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

Revenues (+/-):

Expenditures (+/-): There will be additional staff time needed to implement this new legislation.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses [~~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 practice registered nursing [~~practice~~] to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse [~~practitioner~~].

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse [~~practitioner~~] and a physician in the provision of prescription medication and includes both autonomous and cooperative decision-making, with the advanced practice registered nurse [~~practitioner~~] and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's [~~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 Practice Regis-

tered Nurse's [~~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 practice 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;

(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 practice registered nursing [~~practice~~], the advanced practice registered nurse [~~practitioner~~] shall seek consultation or referral in those situations outside the advanced practice registered nurse's [~~nurse practitioner's~~] scope of practice.

Section 4. Advanced practice 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 practice registered nurse [~~practitioner~~].

Section 5. Advanced practice registered nursing [~~practice~~] shall not preclude the practice by the advanced practice 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 practice 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 practice registered nurse [~~practitioner~~]. An advanced practice 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 APRN[~~ARNP~~] shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's [~~Nurse Practitioner's~~] Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN[~~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 APRN's[~~ARNP's~~] and the physician's actual practice.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse [~~practitioner~~] to determine if the advanced practice registered nurse's [~~nurse practitioner's~~] practice is consistent with the requirements established by 201 KAR Chapter 20.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2007 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses' Association;

(c) "Standards for Office-based Anesthesia Practice", 2005 Edition, American Association of Nurse Anesthetists;

(d) "Scope and Standards for Nurse Anesthesia Practice", 2007 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", 2008 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition, National Association of Pediatric Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2007 Edition, American Academy of Nurse Practitioners;

(i) "Scope of Practice for Nurse Practitioners", 2007 Edition, American Academy of Nurse Practitioners;

(j) "Scope and Standards of Practice for the Acute Care Nurse Practitioner", 2006 Edition. 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;

(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society; and

(n) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's [~~Nurse Practitioner's~~] Prescriptive Authority for Controlled Substances (CAPA-CS)", 6/2010[~~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 T. ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the scope

and standards of practice for ARNPs.

(b) The necessity of this administrative regulation: The board is required by statute to set these requirements.

(c) How this administrative regulation conforms to the content of the authorizing 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 changes the title "Advanced Registered Nurse Practitioner" to "Advanced Practice Registered Nurse"; changes registration to licensure; and recognizes that certification must be in a population focus.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All present and future APRNs. Currently, there are approximately 3,800.

(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: Current APRNs will not need to take any action other than to change their titles. Future APRNs will have to conform to the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed.

(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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 214.615, 314.041, 314.051(3), (6), 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

5.[~~4.~~] A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

6.[~~5.~~] A letter of explanation that addresses each conviction, if applicable; and

7. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or report any disciplinary action pending on any professional or business license in another jurisdiction;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) When taking the examination, abide by and cooperate with security procedures adopted by the board;

(e) Apply to take and pass the National Council Licensure Examination; and

(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immu-

nodeficiency syndrome, as required by KRS 214.615.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination or until the provisional license expires, whichever comes first.

(3) The name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates as established in 201 KAR 20:260, the Certified List of Out-of-state Program of Nursing Graduates, or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Clinical Internship. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4) are met.

(3) To be eligible for a clinical internship, the applicant shall hold a current provisional license.

(4)(a) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (5) of this section or paragraph (b) or (c) of this subsection apply.

(b) If the applicant passes the NCLEX but has not completed the clinical internship prior to the expiration of the provisional license, the applicant shall meet the requirements of Section 1(1)(a), (b), and (c) of this administrative regulation.

1. A new provisional license shall be issued.

2. The applicant shall complete the clinical internship, but does not need to retake the NCLEX.

3. Regardless of hours that may have been completed under the first provisional license, the applicant shall complete 120 hours under the new provisional license.

(c) If the applicant fails the NCLEX and has not completed the clinical internship, the provisional license shall be voided. The applicant shall meet the requirements of Section 1(1)(a) through (e) of this administrative regulation, as applicable.

2. A new provisional license shall be issued after the applicant passes the NCLEX, at which time the applicant shall complete the clinical internship.

3. Regardless of hours that may have been completed under the first provisional license, the applicant shall complete 120 hours under the new provisional license.

(d) If the applicant fails the NCLEX and has completed the clinical internship, the provisional license shall be voided.

1. The applicant shall meet the requirements of Section 1(1)(a) through (e) of this administrative regulation as applicable.

2. The applicant does not need to complete the clinical internship again.

(e) If the applicant does not take the NCLEX and does not complete the clinical internship prior to the expiration of the provisional license, the applicant shall meet the requirements of Section 1(1)(a) through (e) of this administrative regulation, as applicable, and a new provisional license shall be issued under the provisions of this section.

(5) A person with a temporary physical or mental inability to complete the clinical internship shall:

(a) Complete the Petition to Hold Provisional License in Abeyance; and

(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.

(6)(a) If the Petition to Hold Provisional License in Abeyance is granted, the current provisional license shall be void and shall be immediately returned to the board.

(b) The person whose petition has been granted shall not engage in nursing practice.

(7)(a)1. A person whose petition has been granted shall submit a written request to the board to reissue the provisional license once the temporary physical or mental inability has been resolved.

2. The request shall include the name, address, telephone number, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

4. The person shall also submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System, if the previous one (1) is more than six (6) months old.

5. The person shall also submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI, if the previous one (1) is more than six (6) months old.

(b) Upon submission of the required documentation and approval by the board, the board shall reissue the provisional license for six (6) months.

(c) If the required documentation is submitted more than one (1) year from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(8) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically and it shall include the following:

(a) Name, address, telephone number, Social Security number, and date of birth of the applicant;

(b) Provisional license number;

(c) Name, address and telephone number of the facility where the clinical internship was completed; and

(d) Name of the supervising nurse.

(9) To qualify as "direct supervision" under KRS 314.041(5) and 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant is engaged in the clinical internship.

(10) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

(11)(a) An applicant may take the NCLEX examination anytime after being made eligible and may also complete the clinical internship at the same time.

(b) if the applicant has failed the NCLEX examination as a result of an application for licensure in a jurisdiction other than Kentucky, a provisional license to complete the clinical internship shall not be issued until the applicant has passed the NCLEX.

(12) If the applicant fails the examination, the provisional license shall be void and shall be immediately returned to the board.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).

(2)(a) Prior to applying for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course.

(b) The applicant shall return the registered nurse provisional license, if applicable.

(3)(a) The course shall be taken only at an approved LPN program of nursing.

(b) The program of nursing shall seek approval of the course from the board.

(4) The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.

(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.

(6) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

(7) After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

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

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10[~~(2/06)~~], Kentucky Board of Nursing;

(b) "Petition to Hold Provisional License in Abeyance," (8/04), Kentucky Board of Nursing; and

(c) "Certified List of Out of State Program of Nursing Graduates", 6/10[~~(2/06)~~], Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for licensure by examination.

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this 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 adds implementing language for the required criminal background check from the FBI through fingerprints and adds language on reporting any disciplinary action on any other licenses held by the applicant.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for licensure by examination, 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:
Applicants will have to submit a fingerprint card for a criminal background check from the FBI and will have to report any disciplinary action on any other license held by the applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The FBI charges a fee to the applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed..

(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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 214.615, 314.031, 314.041, 314.051, 314.091, 314.103, 314.470, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report <u>and submit a certified copy of</u> each disciplinary action taken or pending on a <u>nursing or other professional or business</u> license by another jurisdiction <u>and a letter of explanation</u>;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction or territory or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1.a. Name of the program of nursing completed and date of graduation, or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;

(i) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI; and

(j) Submit evidence of completion of the clinical internship as required by KRS 314.041, 314.051, and Section 5 of this administrative regulation, if applicable.

(2) An application shall be valid for a period of six (6) months, except as provided for in section 5 of this administrative regulation. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall:

1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:380, which shall have been completed within two (2) years of the date of the application; or

2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a) through (f) and (i) of this administrative regulation shall be issued a temporary work permit.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examina-

tion shall be 0.80 or higher;

(6) The examination shall be revised after each administration to insure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Clinical Internship. This section shall apply to applicants as required by KRS 314.041(7) or 314.051(8).

(1)(a) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(b) The provisional license shall be issued if the applicant meets the requirements of Section 1(1)(a), (b), and (d) through (i) of this administrative regulation.

(2) To be eligible for a clinical internship, the applicant shall hold a current provisional license.

(3) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (4) of this section apply.

(4) A person with a temporary physical or mental inability to complete the clinical internship shall:

(a) Complete the ["]Petition To Hold Provisional License in Abeyance["]; and

(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.

(5)(a) If the ["]Petition To Hold Provisional License in Abeyance["] is granted, the current provisional license shall be void and shall be immediately returned to the board.

(b) The person whose petition has been granted shall not engage in nursing practice.

(6)(a)1. A person whose petition has been granted shall submit a written request to the board to reissue the provisional license if the temporary physical or mental inability has been resolved.

2. The request shall include the name, address, telephone number, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

(b) Upon submission of the required documentation and approval by the board, the board shall reissue the provisional license for six (6) months.

(c) If the required documentation is submitted more than six (6) months from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(7) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically and shall include the following:

(a) Name, address, telephone number, Social Security number, and date of birth of the applicant;

(b) Provisional license number;

(c) Name, address, and telephone number of the facility where the clinical internship was completed; and

(d) Name of the supervising nurse.

(8) To qualify as "direct supervision" under KRS 314.041(5) and 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant is engaged in the clinical internship.

(9) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

Section 6. Applicants for LPN license pursuant to KRS 314.041(14). An applicant for an LPN license pursuant to KRS 314.041(14) shall meet the requirements of this administrative regulation.

Section 7. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

Section 8. Incorporation by Reference. (1) "Petition to Hold Provisional License in Abeyance", [{]8/04[}], Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for licensure by endorsement.

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this 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 adds implementing language for reporting any disciplinary action on any other licenses held by the applicant.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for licensure by endorsement, 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: Applicants will have to report any disciplinary action on any other license held by the applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed.

(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 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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. This administrative regulation establishes procedures for conducting an administrative hearing.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel. (1)(a) Except as provided in subsection (b) of this section, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of which shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or

2. Other attorney designated by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or

2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

(a) Discussed the merits of the action with agency staff;

(b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

(a) Consistent with the panel's deliberations; and

(b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant <u>for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314</u>, a hearing fee in an amount equal to the cost of stenographic services and the cost of the hearing officer shall be assessed against the licensee or applicant[~~for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314~~]. In a case of financial hardship, the board may waive all or part of the fee.

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets procedures for disciplinary hearings.

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures.

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

(a) How the amendment will change this existing administrative regulation: It corrects the placement of a phrase that was misplaced.

(b) The necessity of the amendment to this administrative regulation: The mistake was recently discovered.

(c) How the amendment conforms to the content of the authorizing statutes: By correcting the error.

(d) How the amendment will assist in the effective administration of the statutes: By correcting the error.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nurses who have disciplinary hearings; 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: No action is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed.

(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 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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 164.772, 194A.540, 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.075, 314.085(1), 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of the statutes or administrative regulations. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

(a) Submitting a completed application form required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (m);

(c) Submitting a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(d) Submitting a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(e)[~~(d)~~] Submitting a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

(f)[~~(e)~~] Submitting a letter of explanation that addresses each conviction, if applicable;[~~and~~]

(g) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or report any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and

(h)[~~(f)~~] Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall:

1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:380. The refresher course shall have been completed within two (2) years of the date of the application; or

2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3 for reinstatement if that individual:

1. Was exempt from the contact hour earning requirement pursuant to KRS 314.073(1) and applies for reinstatement of a lapsed license within one (1) year from the date of lapse; or

2. Allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (m);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (m); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation;

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default of a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection may be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1) (a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;

2. Marriage certificate;

3. Divorce decree; or

4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets procedures for reinstatement of a license

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures.

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

(a) How the amendment will change this existing administrative regulation: It adds implementing language for a criminal background check from the FBI through fingerprints. It also requires the disclosure of disciplinary actions taken against another license held by the applicant.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for reinstatement of a license; 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 submit a fingerprint card.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The FBI charges a fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed.

(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 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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

(1) Hold a valid and current license issued by the board;

(2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office, postmarked no later than the last day of the licensure period;

(3) Submit the current fee required by 201 KAR 20:240;

(4) Have met requirements of 201 KAR 20:215, if applicable;

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;

(6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and

(7) Have paid all monies due to the board.

Section 2. An applicant shall be exempt from meeting the continuing competency requirements of 201 KAR 20:215 if renewing for the first time:

(1) An original Kentucky license issued by examination or endorsement; or

(2) A license that has been reinstated pursuant to 201 KAR 20:225.

Section 3. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085.

Section 4. Upon the request of the board, submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets procedures for renewal of a license

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures.

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

(a) How the amendment will change this existing administrative regulation: It adds implementing language for a criminal background check from the FBI through fingerprints. It also requires the disclosure of disciplinary actions taken against another license held by the applicant.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for renewal of a license; currently there are approximately 67,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to submit a fingerprint card and report disciplinary actions on other licenses held.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The FBI charges a fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed.

(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 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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.142(1)(b), 314.161

STATUTORY AUTHORITY: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6) 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure,[~~registration,~~] examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure[~~or Registration~~] Applications. (1) The board shall collect a fee for:

(a) An application for licensure; and

(b)[~~An application for registration; and~~

~~(c)~~] Licensure renewal or reinstatement.

(2) The fee for an application shall be:

(a) Licensure by endorsement as a registered nurse - $150.

(b) Licensure by endorsement as a licensed practical nurse - $150.

(c) Licensure by examination as a registered nurse - $110.

(d) Licensure by examination as a licensed practical nurse - $110.

(e) Renewal of license - forty (40) dollars.

(f) Retired status - twenty-five (25) dollars.

(g) Reinstatement of license - $120.

(h) Paper copy of an application - forty (40) dollars.

(i) Full verification of licensure, credential or registration history - fifty (50) dollars.

(j) Duplicate license or registration card or letter - thirty-five (35) dollars.

(k) Licensure[~~Registration~~] as an advanced practice registered nurse[~~practitioner~~] - $150.

(l) Renewal of licensure[~~registration~~] as an advanced practice registered nurse[~~practitioner~~] - forty (40) dollars.

(m) Reinstatement of licensure[~~registration~~] as an advanced practice registered nurse[~~practitioner~~] - $120.

(n) Name change - thirty-five (35) dollars.

(o) Application to establish a registered nurse or licensed practical nurse prelicensure program of nursing pursuant to 201 KAR 20:280 - $2,000.

(p) Application to establish a doctor of nursing practice program pursuant to 201 KAR 20:061, Section 1 - $250.

(q) Application to establish a doctor of nursing practice program pursuant to 201 KAR 20:061, Section 2 - $2,000.

(r) Application to approve an advanced practice registered nurse program pursuant to 201 KAR 20:062, Section 3 - $250.

(s) Application to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062, Section 4 - $2,000.

(3) An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:

(1) Initial provider approval - $400.

(2) Reinstatement of provider approval - $400.

(3) Renewal of approval - $200.

(4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:

(a) Validation of the current status of a temporary work permit, provisional license, license[~~, registration~~], or credential:

1. If requested in writing in individual nurse format - fifty (50) dollars.

2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name.

(b) Copy of an examination result or transcript - twenty-five (25) dollars.

(c) Nursing certificate [~~(optional)~~] - thirty (30) dollars.

(d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars.

(2) An applicant for licensure who takes or retakes the licensure examination shall pay:

(a) The current examination fee required by the national council of state boards of nursing; and

(b) Application for licensure fee pursuant to Section 1 of this administrative regulation.

(3) A graduate of a foreign school of nursing shall be responsible for:

(a) Costs incurred to submit credentials translated into English;

(b) Immigration documents; and

(c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office.

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office.

(3) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential[~~or registration~~] shall be issued the appropriate approval, license, or credential[~~or registration~~] without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be $120.

(2) The credential renewal fee shall be thirty-five (35) dollars.

(3) The credential reinstatement fee shall be $120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets fees for applications and services.

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting fees.

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

(a) How the amendment will change this existing administrative

regulation: It changes the title "advanced registered nurse practitioner" to "advanced practice registered nurse". It also deletes or changes references to registration to licensure. It establishes several new fees.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179 and SB 127.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179 and SB 127.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179 and SB 127.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nurses; currently there are approximately 67,000 and schools of nursing, 87.

(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 is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It establishes four new fees for DNP programs and APRN programs. These are application fees for establishing new programs.

(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 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 314.131.

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? Unknown

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? Unknown

(d) How much will it cost to administer this program for subsequent years? Unknown

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

Revenues (+/-): Additional revenue will be generated from application fees. However, it is unknown how many new applications will be received.

Expenditures (+/-): Additional staff time and possibly additional staff may be needed.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:370. Applications for licensure[~~and registration~~].

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.041, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure[~~and registration~~].

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure[~~practitioner registration~~], renewal, or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, "Application for Licensure";

(b) For RN or LPN Renewal, "Annual Licensure Renewal Application: RN or LPN";

(c) For licensure[~~registration~~] or reinstatement as an advanced practice registered nurse[~~practitioner~~], "Application for Licensure[~~Registration~~] as an Advanced Practice Registered Nurse[~~Practitioner~~]";

(d) For renewal as an advanced practice registered nurse[~~practitioner~~], "APRN Licensure[~~ARNP Registration~~] Renewal Application";

(e) For renewal as an RN and an APRN[~~ARNP~~], "Annual Licensure Renewal Application: RN and APRN[~~ARNP~~]";

(f) For licensure as an RN and[~~registration~~] as an APRN[~~ARNP~~], "Application for RN[~~Licensure~~] and APRN Licensure[~~ARNP Registration~~]";

(g) For retired licensure status, "Application for Retired Status"; or

(h) "Annual APRN Licensure[~~ARNP Registration~~] Renewal Application for APRN[~~ARNP~~] with RN Compact License (not Kentucky)";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure[~~practitioner registration~~], renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure[~~or registration~~] shall be postmarked or received by the board no later than the last day for renewal of license[~~or registration~~].

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 6/2010[~~12/2009~~], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 6/2010[~~4/2007~~], Kentucky Board of Nursing;

(c) "Application for Licensure[~~Registration~~] as an Advanced Practice Registered Nurse[~~Practitioner~~]", 6/2010[~~12/2009~~], Kentucky Board of Nursing;

(d)[~~"ARNP Registration Renewal Application", 6/2005, Kentucky Board of Nursing;~~

~~(e)~~] "Annual Licensure Renewal Application: RN and APRN[~~ARNP~~]", 6/2010[~~4/2007~~], Kentucky Board of Nursing;

(e)[~~(f)~~] "Application for RN and APRN Licensure" 6/2010[~~Licensure and ARNP Registration", 12/2009~~], Kentucky Board of Nursing;

(f)[~~(g)~~] "Application for Retired Status", 8/2004, Kentucky Board of Nursing; and

(g)[~~(h)~~] "Annual APRN Licensure[~~ARNP Registration~~] Renewal Application for APRN[~~ARNP~~] with RN Compact License (not Kentucky)", 6/2010[~~4/2007~~], 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: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It incorporates applications.

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By incorporating applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By incorporating applications.

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

(a) How the amendment will change this existing administrative regulation: It changes the title "advanced registered nurse practitioner" to "advanced practice registered nurse". It also deletes or changes references to registration to licensure.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nurses; currently there are approximately 67,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed..

(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 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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), 314.142, 314.470, 421.500-421.550

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. On the form "Application for Initial or Continued SANE Course Approval", the applicant for approval of a SANE course shall submit evidence of:

(1) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(2) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided.

(3) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees.

(b) Course outcomes. The outcomes shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner.

(c) Unit objectives. Individual unit objectives shall be stated in operational or behavioral terms with supportive content identified.

(d) Content. The content shall be described in detailed outline format with corresponding lesson plans and time frame. The content shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes.

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be a minimum of sixty (60) hours and shall include:

a. Supervised detailed genital inspection, speculum examination, visualization techniques, and equipment - twenty six (26) hours.

b. Supervised mock sexual assault history taking and examination techniques with evaluation - ten (10) hours.

c. Observing relevant civil or criminal trials, meeting with Commonwealth Attorney, or similar legal experience - sixteen (16) hours.

d. Meeting with rape crisis victim advocate or mental health professional with expertise in the treatment of sexual assault individuals - four (4) hours.

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of individuals reporting sexual assault:

a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement, and judicial system personnel;

b. Application of the statewide medical protocol relating to the forensic and medical examination of individuals reporting sexual assault pursuant to KRS 216B.400(2);

c. Principles and techniques of evidence identification, collection, evaluation, preservation and chain of custody;

d. Assessment of injuries, including injuries of forensic significance;

e. Physician consultation and referral;

f. Medicolegal documentation;

g. Victim's bill of rights, KRS 421.500 through 421.550;

h. Crisis intervention;

i. Dynamics of sexual assault;

j. Testifying in court;

k. Overview of the criminal justice system and related legal issues;

l. Available community resources including rape crisis centers;

m. Historical development of forensic nursing conceptual model;

n. Cultural diversity and special populations;

o. Ethics;

p. Genital anatomy, normal variances, and development stages;

q. Health care implications and interventions; and

r. Developing policies and procedures.

(e) Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation. There shall be clearly defined methods for evaluating the learner's achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty, and administration.

(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be

granted for a four (4) year period.
(3) Records shall be maintained for a period of five (5) years, including the following:
(a) Provider name, date, and site of the course; and
(b) Participant roster, with a minimum of names, Social Security numbers, and license numbers.
(4) A participant shall receive a certificate of completion that documents the following:
(a) Name of participant;
(b) Title of course, date, and location;
(c) Provider's name; and
(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the "Application for Initial or Continued SANE Course Approval".

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:
(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.
(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:
(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;
(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant's course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;
(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;
(d) Complete the "Sexual Assault Nurse Examiner Application for Credential";[~~and~~]
(e) Pay the fee established in 201 KAR 20:240;[~~.~~]
(f) Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;
(g) Provide a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
(h) Provide a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
(i) Provide a letter of explanation that addresses each conviction, if applicable.
(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.
(2) Upon completion of the required continuing education, completion of the "SANE Renewal Application" and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.
(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.
(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, the individual may reinstate the credential by:
(a) Submitting the "Application for SANE Credential";
(b) Paying the fee established in 201 KAR 20:240;[~~and~~]
(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed;[.]
(d) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;
(e) Providing a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
(f) Providing a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
(g) Providing a letter of explanation that addresses each conviction, if applicable.
(2) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:
(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;
(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and
(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Initial or Continued SANE Course Approval", 6/97, Kentucky Board of Nursing;
(b) "Sexual Assault Nurse Examiner Application for Credential", 6/2010[~~12/2009~~], Kentucky Board of Nursing;
(c) "SANE Renewal Application", 4/2007, Kentucky Board of Nursing; and
(d) "Annual SANE Credential Renewal Application for RN Compact License", 4/2007, Kentucky Board of Nursing.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JIMMY ISENBERG, President
APPROVED BY AGENCY: June 17, 2010
FILED WITH LRC: July 13, 2010 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individu-

als interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets requirements for Sexual Assault Nurse Examiners (SANE).
(b) The necessity of this administrative regulation: The board is required by statute to promulgate this 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 adds implementing language for a criminal background check from the FBI through fingerprints. It also requires a criminal background check from the Kentucky court system.
(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.
(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.
(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for SANE status; 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 submit a fingerprint card and request for a state criminal background check.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The FBI and the Kentucky Administrative Office of the Courts charge a fee.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There is no cost.
(b) On a continuing basis: There is no 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 is needed.
(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 314.131.
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? 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? There are no additional costs.
(d) How much will it cost to administer this program for subsequent years? There are no additional costs.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.137
STATUTORY AUTHORITY: KRS 314.131(1), 314.137
NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.
(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.
(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.
(4) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program.
(5) "Supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician, and when a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:
1. File with the board the "Application for Dialysis Technician Credential";

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program pursuant to subsection (1)(b) of this section;

3. Pay the fee established in Section 12 of this administrative regulation;

4. Provide a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application;

5. Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

6. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and

7.[~~6.~~] Provide to the board a letter of explanation that addresses each conviction.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide". An applicant shall submit evidence to the board of successful completion of the following sections:

a. State and federal regulations governing dialysis;

b. The principles and legal aspects of documentation, communication and patient rights;

c. The roles of the dialysis technician and other multidisciplinary team members; and

d. Principles related to patient safety.

4. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the applicant's immediate supervisor in Kentucky. The "Checklist for Dialysis Technician Competency Validation" shall be filed after the submission of the "Application for Dialysis Credential".

5. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4) (a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the "Application for Dialysis Technician Credential"; and

2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until:

1. The credential is issued; or

2. The application is denied by the board.

(5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine whether:

(a) The application shall be processed with no further action; or

(b) The application shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or

2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The "Application for Renewal of the Dialysis Technician Credential"; and

(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at the time of renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:

(a) Submitting the "Application for Dialysis Technician Credential";

(b) Paying the fee established in Section 12 of this administrative regulation; and

(c) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:

(a) Completing a board-approved dialysis technician training program before submitting the "application for Dialysis Technician Credential". While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the "Application for Dialysis Technician Credential";

(c) Paying the fee established in Section 12 of this administrative regulation;

(d) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor;[~~and~~]

(e) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of application; and

(f) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is dated within six (6) months of the date of the application.

(3) An "Application for Dialysis Technician Credential" submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant or advanced practice registered nurse[~~practitioner~~]. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units.

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician.

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse[~~practitioner~~];

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board; or

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the application for a credential.

(4) The board shall follow the procedures set out in and have the authority set forth in KRS 314.091, 201 KAR 20:161, and 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to $10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner;

(c) Objectives. Objectives shall be stated in behavioral terms with supportive content identified;

(d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

(e) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles;

(f) Instructional or reference materials. All required instructional reference materials shall be identified; and

(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. The final examination shall be administered only during the final forty (40) hours of the training program. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records are maintained.

At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) working days of the program completion date.

(12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closing, a copy of the program trainee roster from the date of the last renewal to the date of closing, the location of the program's records as defined in subsection (9) of this section, and the name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board and the program shall meet the requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval";

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) and (5) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

Section 12. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be $100.

(4) The dialysis technician training program initial approval fee shall be $950.

(5) The dialysis technician training program continued approval fee shall be $800.

(6) The dialysis technician training program reinstatement fee shall be $950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of $150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician shall be deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid

service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime. Upon learning of any failure to notify the board under this provision, the board may initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or revoked, or if renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates. Upon failure of the person to submit to a chemical dependency evaluation or a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given consent to submit to a chemical dependency evaluation of a mental or physical examination when so directed in writing by the board. The direction to submit to an evaluation or an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining practitioner's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any chemical dependency evaluation or mental or physical examination ordered by the board.

Section 14. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/06;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 12/09;

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 9/07;

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/07;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for dialysis technicians.

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this 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 adds implementing language for a criminal background check from the FBI through fingerprints.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for dialysis technician credentialing; 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 submit a fingerprint card.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The FBI charges a fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no 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 is needed..

(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 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 314.131.

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? 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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensure for Professional Art Therapists
(Amendment)

201 KAR 34:020. Fees.

RELATES TO: KRS 309.133, 309.1335, 309.138

STATUTORY AUTHORITY: KRS 309.1315(1), (4), (13), 309.135

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(13) and 309.135 require the board to promulgate an administrative regulation establishing fees for licensure, examination, renewal and reinstatement of the license. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the application for licensure shall be $100.

(2) The application fee shall be nonrefundable.

Section 2. Examination Fee. (1) The fee for the written examination shall be $100.

(2) The fee for retaking the examination shall be $100.

Section 3. Initial Licensure Fee. (1) The initial licensure fee shall be $100.

(2) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 4. Renewal Fee. The renewal fee for licensure shall be $200 for a two (2) year period.

Section 5. Late Fee. The late fee for a license who applies for renewal within ninety (90) days of his or her original renewal deadline shall be fifty (50) dollars, which shall be paid in addition to the renewal fee set out in Section 4 of this administrative regulation.

Section 6. Reinstatement Fee. The reinstatement fee for a licensee who applies for reinstatement more than[~~within~~] ninety (90) days but prior to 180 days after[~~of~~] the original renewal deadline shall be $100, which shall be paid in addition to the renewal fee set out in Section 4 of this administrative regulation.

Section 7. Incorporation by Refernce. (1) "LPAT Reinstatement Form", 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

FRAN BELVIN, Chair

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2010 at 1 p.m., at 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 20, 2010, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Frances Short, Executive Director, Kentucky Board of Licensure for Professional Art Therapists, 911 Leawood Drive, Frankfort, Kentucky 40061, phone (502) 564-3296, fax (502) 696-8030.

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 fees for licensure of professional art therapists.

(b) The necessity of this administrative regulation: This regulation is necessary to identify the fees for a professional art therapist license.

(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 necessary to administer the law.

(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 licensure in this program.

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

(a) How the amendment will change this existing administrative regulation: The amendment lowers the late renewal fee and establishes a reinstatement fee.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to identified the late renewal fee and the reinstatement fee.

(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 to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing a fee for missing the renewal period and the associated costs for the additional administrative costs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 80 persons licensed as art therapists in the Commonwealth.

(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: Persons who miss their renewal deadline will be required to pay a late fee or a reinstatement fee in addition to the renewal fee in order to cover the additional administrative costs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees that renew within 90 days of their renewal date will be required to pay an additional $50. Licensees that reinstate more than 90 days after their renewal date will be required to pay an additional $100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will clarify the late fee and the reinstatement fee.

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

(a) Initially: When an individual whose license has expired seeks late renewal or reinstatement, their renewal or reinstatement is no longer routine. The board administrative must take additional steps to ensure that the individual has not practiced on an expired license. The renewal or reinstatement also requires additional steps related to data input that involve additional time from the board administrator.

(b) On a continuing basis: See paragraph (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees for reinstatements and late renewals 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 establishes fees and directly increases fees.

(9) TIERING: Is tiering applied? Tiering was applied for renewals within 90 days of the original renewal deadline and after the 90 day period.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Professional Art Therapists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.1315, 309.133.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:050. Renewal of licenses and extension of temporary licenses.

RELATES TO: KRS 309.304(5), 309.312, 309.314

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314 establishes requirements for annual renewal of the license. This administrative regulation sets forth that process in detail.

Section 1. Definitions. (1) "CDI" means a Certified Deaf Interpreter.

(2) "EIPA" means Education Interpreter Performance Assessment.

(3) "ESSE: I" means Educational Signs Skills Evaluation: Interpreting.

(4) "ESSE: R" means Educational Signs Skills Evaluation: Receptive.

(5) "NAD" means National Association for the Deaf.

(6) "NIC" means National Interpreter Certification.

(7) "Nondegree applicant" means an individual who has either no degree or a degree other than an interpreter training program degree.

(8) "RID" means Registry of the Interpreters for the Deaf.

(9) "SCPI" means Sign Communication Proficiency Interview.

Section 2. Renewal of Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

(1) A completed "License Renewal Application" form;

(2) The renewal fee as established in 201 KAR 39:040, Section 3;

(3) Proof of current certification of the licensee as established in 201 KAR 39:030; and

(4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090, Section 2(1).

Section 3. A license not renewed by July 1, may be renewed during the following sixty (60) day period, in accordance with KRS 309.314(2), by:

(1) Complying with the requirements established in Section 1 of this administrative regulation; and

(2) Submitting the late renewal fee established in 201 KAR 39:040, Section 4(1).

Section 4. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

(1) Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 5(1);

(2) Submission of a completed "License Reinstatement Application" Form to the board;

(3) Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 10; and

(4) Completion of the requirements of Section 5 of this administrative regulation.

Section 5. Extensions of Temporary Licenses. Effective July 1, 2007, an application for extension of a temporary license for 2007/2008 shall be classified as a first renewal and the applicant's first request for an extension. Subsequent requests for extension shall meet the requirements of subsection 1, 2, or 3 of this section. An applicant who comes into the system after July 1, 2007 shall meet the applicable requirements for the first request for an extension.

(1) Requirements for graduates of a nondegreed interpreter training program.

(a) A graduate of a baccalaureate or associate interpreter training program may apply on or before July 1, for a first extension of a temporary license by submitting:

1. A copy of the test results of either the RID written exam or the NIC written exam; or

2. Documentation of a valid NAD Level III certification.

(b) An extension shall be valid for one (1) year.

(c) In order to obtain a second one (1) year extension, a graduate shall submit, on or before July 1, proof that the graduate:

1. Has taken and passed either the RID written exam or NIC written exam; or

2. Holds a valid NAD III certification.

(d) In order to obtain a third and final one (1) year extension, a graduate shall submit, on or before July 1, proof that the graduate has taken either the RID performance exam or the NIC performance exam.

(e) An extension may be granted pending test results.

(2) Requirements for nondegreed applicants.

(a) NAD III or SCPI: advanced certified.

1. A nondegreed applicant who is either NAD III or SCPI: advanced certified and who interprets in both the community and a P-12 educational setting is entitled to a maximum of three (3) extensions.

2. To obtain the first extension, an applicant shall submit, on or before July 1, proof of:

a. Valid NAD III certification; or

b. Having passed the NIC or RID written exam.

3. To obtain a second extension, an applicant shall submit, on or before July 1, proof of:

a. Certification of NAD III or SCPI: advanced; and

b. Having taken either the RID or NIC performance exam.

4. To obtain a third and final extension, an applicant shall submit, on or before July 1, proof of:

a. NAD III certification; or

b. SCPI: advanced certification.

(b) Nondegreed applicants who are not NAD III certified and work in a P-12 educational setting.

1. In order to obtain a first extension, an applicant shall submit, on or before July 1, proof of:

a. An EIPA score of three and five tenths (3.5) or higher;

b. An ESSE: I score of four and zero tenths (4.0) or higher and an ESSE: R score of four and zero tenths (4.0) or higher;

c. SCPI: advanced certification; or

d. Test results of either the RID written exam or the NIC written exam.

2. In order to obtain a second extension, an applicant shall submit, on or before July 1, proof that the applicant has taken and passed the RID written exam or the NIC written exam.

3. In order to obtain a third and final extension, an applicant shall submit, on or before July 1, proof of having taken either the RID performance exam or the NIC performance exam.

(c) Deaf applicants interpreting in the community and a P-12 educational setting.

1. In order to obtain a first extension, a deaf applicant shall submit, on or before July 1, a copy of the test results of the CDI written exam.

2. In order to obtain a second extension, a deaf applicant shall submit, on or before July 1 of the fifth year following the first extension, proof of having passed the CDI written exam.

3. In order to obtain a third and final extension, a deaf applicant shall submit, on or before July 1 of the fifth year following the second extension, proof of having taken the CDI performance exam.

Section 6. To request an extension of a temporary license a licensee shall submit to the board:

(1) A completed "Temporary License Extension Application" Form;

(2) A report from a supervisor describing the progress achieved by the person who was supervised and a recommendation from the supervisor as to whether the license should be extended;

(3) Proof of completion of the continuing education requirements as set forth in 201 KAR 39:090;

(4) An explanation of the need for the extension request; and

(5) The fee set forth in 201 KAR 39:040, Section 4(2).

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

(a) "License Renewal Application, 2001" form;

(b) "License Reinstatement Application, 2001" form; and

(c) "Temporary License Extension, 2001" form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARTIE GRASSMAN, Chair

APPROVED BY AGENCY: June 4, 2010

FILED WITH LRC: June 16, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2010 at 9 a.m. at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Karen Lockett, Board Administrator, Kentucky Board of Interpreters for the Deaf and Hard of Hearing, PO Box 1370, Frankfort, Kentucky 40602, phone 502 573-2604.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes procedures for the renewal and extension of licenses as an interpreter.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 309.304(5), 309.312, 309.314.

(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 generally.

(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 delineating application procedures and requirements for those seeking to renew or extend a license or temporary license respectively.

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

(a) How the amendment will change this existing administrative regulation: It changes the length of the second and third extension for a CDI from 2 to 5 years.

(b) The necessity of the amendment to this administrative regulation: National studies have indicated that CDI educational opportunities have not been sufficient to meet time requirements for progress in licensure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.312(3) establishes that board may establish circumstances for granting extensions.

(d) How the amendment will assist in the effective administration of the statutes: This regulation is required by KRS 309.312

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4 individuals are temporarily licensed Certified Deaf Interpreters.

(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: Temporary licensed CDIs will have a longer period to pass a written and performance exam.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal, if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Temporary licensed CDIs will have a longer period to pass a written and performance exam.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.304(5), 309.312, 309.314.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:010. Commercial boat docks, concession stands, and boat rental facilities.[~~Boat docks and concession stands.~~]

RELATES TO: KRS 150.025(1)[~~150.025, 150.620~~]

STATUTORY AUTHORITY: KRS. [~~13A.350,~~]KRS 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes the approval process for the construction of commercial boat docks, concession stands, and boat rental facilities on lakes and shoreline owned or controlled by the department.

Section 1. Written Request, Public Notice, and Public Hearings. (1) The following activities shall be prohibited on - department-owned or - controlled lakes and shorelines without prior written approval from the department:

(a) Construction and operation of a commercial boat dock;

(b) Construction and operation of a concession stand; and

(c) Boat rental.

(2) A person, firm, or corporation may submit to the department, in writing, a request to conduct the activities specified in subsection (1) of this section.

(3) Upon receipt of a written request, the department shall:

(a) Provide notice to the general public of the request;

(b) Provide written notice to all known adjacent property owners on the lake for which the request was made; and

(c) Hold a public hearing a time and location most convenient to the public at a location within ten (10) miles of the boundary of the lake so that the public may make comments about the proposed commercial request.

(4) The notices specified in subsection (3) of this section shall include:

(a) At least a thirty (30) day written comment period; and

(b) The date of the next scheduled quarterly meeting involving the Fish and Wildlife Commission when the commercial request will be considered.

Section 2. Department Review and Approval. (1) The department shall:

(a) Review and consider all written and verbal comments received from the public;

(b) Provide to the Fish and Wildlife Commission:

1. All written comments received and a synopsis of all verbal comments received; and

2. A recommendation on the final decision.

(2) The commission shall:

1. Review and consider all comments received; and

2. Approve or deny the request.

(3) If one (1) or more of the activities specified in Section 1 of this administrative regulation are approved by the Fish and Wildlife Commission, a person, firm, or corporation shall not begin construction or operation of a commercial boat dock, concession stand, or boat rental business until possessing a signed agreement from the commissioner of the department.[~~NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prohibits boat docks and concessions on lakes and property owned by the Department of Fish and Wildlife Resources without the written consent of the commissioner. It is necessary in order that the department may have control over boat docks and concessions.~~

~~Section 1. No person, firm, or corporation shall build or attempt to build any boat docks, or operate, or attempt to operate any boat docks, or have and maintain any boats for hire, or maintain or operate any concession stands on any of the Department of Fish and Wildlife Resources lakes or property without written consent to do so from the Commissioner of the Department of Fish and Wildlife Resources and with the approval of the Fish and Wildlife Resources Commission.~~

~~Section 2. This administrative regulation applies only to lakes and property owned by the Department of Fish and Wildlife Resources.~~]

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: July 8, 2010

FILED WITH LRC: July 9, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010, 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 available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2010. 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, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, 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 approval process for department authorized commercial boat docks, concession stands, and boat rental facilities on lakes and shoreline owned or controlled by the department. It also establishes protocol for notifying the general public and adjacent landowners and provides for a public comment process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to standardize the process for consideration of new commercial facilities on department owned or controlled lakes. It is also important to provide a system of public input into this process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help the department maintain and operate lands acquired for public recreation.

(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 further delineates a formal process for a person, firm, or corporation to request a commercial facility on department owned or controlled property and defines the procedure for the department to receive and review public input to consider such formal development requests to try and determine if it is in the best interest of the department and the public.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to clearly define a formal process that was previously lacking.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by improving a process that will assist the department in managing and operating lands acquired for public recreation. It also allows for public input into this process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will better assist the department in the effective administration of the statutes by improving public input and better defining the process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The future number of formal requests for commercial boat docks, concession stands, and boat rental facilities is unknown, but it is extremely rare for the department to receive such requests. If a request is received by the department, then the department, the general public, and all adjacent landowners may be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A person, firm, or corporation requesting an activity covered by this regulation will have to provide a formal written request to the department. The department will have to follow a defined process that includes providing public notice, written notice to adjacent landowners, and holding a public hearing. The department will have to collect and review all public input and ultimately make a decision on approval or disapproval. The public will have several opportunities to provide input.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The public and the department will benefit from a more defined and clarified protocol when considering a commercial boat dock, concession stand, or boat rental facility. The amended process will be reasonable, fair, and transparent.

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

(a) Initially: There should not be a new cost to the administrative body other than transportation costs and rental costs associated with the public hearing.

(b) On a continuing basis: The potential costs are negligible.

(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 fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees were established or increased as a result of this amendment.

(9) TIERING: Is tiering applied? No, all people involved in the process will be treated consistently and equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources and the Fish and Wildlife Commission will be impacted by this regulation amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 authorizes the procedures outlined in this 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? This regulation will not generate income for 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 regulation should not generate income for subsequent years.

(c) How much will it cost to administer this program for the first year? The cost is negligible.

(d) How much will it cost to administer this program for subsequent years? The cost is negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should not be a fiscal impact.

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health
(Amendment)

302 KAR 20:020. General requirements for interstate and intrastate movement of animals.

RELATES TO: KRS 256.295(1), 257.030(4)
STATUTORY AUTHORITY: KRS 257.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030(4) authorizes the Board of Agriculture to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes the general health requirements and provisions concerning interstate and intrastate movement of animals.

Section 1. General Requirements and Provisions. (1) Premises of origin information. Premises address, including road name and number, city, and state, or a PIN shall be provided for the premises from which the movement originated for all animals upon movement to a state-federal approved stockyard, exhibition, or assembly point.

(2) Official identifier. The official individual, group, or lot animal identification shall consist of a set of alphanumeric characters or physical characteristics which are uniquely associated with an individual animal, group or lot of animals as listed in this subsection:

(a) Official USDA animal tag;

(b) An official breed association tattoo, tag, or photograph;

(c) Breed registration brand;

(d) A written or graphic description of an equine or camelid animal which uniquely identifies that equine or camelid animal and includes all of the following:

1. Breed;

2. Age;

3. Color;

4. Distinctive Markings; and

5. Gender and sexual status;

(e) An EID if all the following apply:

1. The EID uniquely identifies the animal;

2. The EID is attached to or implanted in the animal;

3. The person having custody of the animal has an EID reader that can read the EID or the facility has a reader;

4. The EID is registered to a PIN or to a person;

(f) A leg or wing band number that uniquely identifies poultry, ratite, or other avian species; or

(g) Breed registry ear notches on swine.

(h) Official USDA back tags may be used for identification on slaughter animals with approval from the Kentucky State Veterinarian.

(3) Certificate of veterinary inspection.

(a) A CVI or entry permit shall be required for movement or exhibition of each animal, except as specified in each species section established in 302 KAR 20:040 and 20:065.

(b) A CVI shall be valid for thirty (30) days after date of inspection and issuance except as provided in 302 KAR 20:065.

(c) A CVI shall contain the following information:

1. Identification of each animal recorded on the certificate. An official individual identification shall be required except
if group or lot identification numbers are approved by USDA or the OSV;

2. The species, breed, sex, and age of the animal;

3. The name and address of the owner or agent shipping the animal and the location from which the animal is shipped;

4. The name and address of the person receiving the animal and the location at which the animal will be received;

5. The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me and that they are not showing signs of infection or communicable disease (except if noted). The vaccinations and results of tests are as indicated on the certificate. To the best of my knowledge, the animals listed on this certificate meet the state of destination and federal interstate requirements."; and

6. For movements requiring vaccination, the:

a. Date of vaccination;

b. Name of vaccine;

c. Serial number of vaccine; and

d. Expiration date of the vaccine used.

(d) Distribution of written CVIs by the accredited veterinarian.

1. The first page shall be submitted to the OSV within seven (7) days of the date it is written.

2. The second page shall accompany the animal being moved.

3. The third page shall be sent to the state of destination within seven (7) days of the date it is written.

4. The fourth page shall be retained by the issuing veterinarian.

(4) Certificate of Veterinary Inspection Reconsignment Form. sale animals purchased at a Kentucky sale venue may move to the buyer's destination with a reconsignee certificate attached to the original CVI for the sale if the following conditions are met:

(a) The state of destination agrees to accept a reconsigned CVI;

(b) The animal will reach its final destination within thirty (30) days of the date on the original CVI;

(c) All requirements of the state of destination have been met and test results included on the CVI; and

(d) The reconsigning veterinarian submits the Reconsignee Certificate and a copy of the original CVI to the state of destination and to the OSV within seven (7) days of the date of reconsignment.

(5) Equine Interstate Event Permit.

(a) The Equine Interstate Event Permit shall be accepted from states participating in a Memorandum of Agreement with Kentucky.

(b) The Equine Interstate Event Permit shall be valid for six (6) months from date of issue for out of state equine.

(c) The Equine Interstate Event Permit shall be valid for one (1) year from date of issue for intrastate movement for exhibition or until the expiration of the EIA test.

(d) The equine shall have a permanent individual animal identification in the form of a unique identifier, lip tattoo, brand, electronic implant, or digital photograph, which shall be incorporated into the issued permit.

(e) An accurate event itinerary log shall be in the owner or transporter's possession documenting each equine movement during the period of permit.

(6) Entry permit.

(a) A permit, if required by 302 KAR 20:040 or 20:065 or KRS 257.030(2), shall be obtained from the OSV and shall include:

1. Number of animals;

2. Species, breed, sex, age, and if requested, weight;

3. Consignor premises and either the premises of origin or the PIN;

4. Consignee premises and either the premises of destination or the PIN;

5. Arrival date of each animal; and

6. Any special restrictions relating to the movement of each animal.

(b) A permit for movement requiring CVI shall only be issued to an accredited veterinarian.

(7) Owner and shipper's declaration shall be accepted only for imported animals originating directly from the farm of origin and proceeding directly to a recognized slaughtering center for immediate slaughter or to a state-federal approved stockyard for reconsignment to immediate slaughter with no diversion whatever enroute and shall include the information required by subsection (6)(a) of this section.

(8) An animal that is known to be affected with or exposed to any communicable disease or that originated from a quarantined area or quarantined herd shall not enter Kentucky or be transported intrastate within Kentucky without permission of the OSV.

(9) An animal entering or moving that is not in compliance with existing administrative regulations and statutes shall be subject to expulsion or isolation and quarantine pending compliance.

(10) All required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(11) All required laboratory tests shall be conducted in a state-federal approved laboratory.

(12) Required testing or vaccination. All required tests and vaccinations, including brucellosis and tuberculosis, shall be performed by one (1) of the following:

(a) A licensed and accredited veterinarian;

(b) An authorized representative of the State Veterinarian; or

(c) An authorized representative of the federal government.

(13) The owner or consignor shall be responsible for all required laboratory tests, vaccinations, or procedures and animal identification prior to sale or change of ownership.

(14) Any person consigning an animal for interstate movement or moving an animal through the state of Kentucky from another state shall:

(a) Comply with the requirements of the state of destination prior to movement or be approved for movement subject to the requirements of that state; and

(b) Provide documentation required by state of destination upon request.

Section 2. Cleaning and Disinfection of Conveyances Used to Transport Animals. The owners and operators of planes, railway cars, trucks, or other conveyances that have been used for the movement of animals infected with or exposed to any communicable disease shall have the conveyances cleaned and disinfected. A certificate of cleaning and disinfecting shall be in possession of the operator or carrier.

Section 3. Incorporation by Reference. (1) "Reconsignee Certificate," Kentucky Department of Agriculture, Office of State Veterinarian, October 2004, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010, at 10 a.m., at Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31 2010. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adds USDA back tags for slaughter animals as an acceptable form of an animal identifier.

(b) The necessity of this administrative regulation: This is necessary to allow USDA back tags for slaughter animals as an acceptable form of an animal identifier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030 authorizes the Board of Agriculture to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes the general health requirements and provisions concerning interstate and intrastate movement of animals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will make easier the movement of animals by providing an additional option for the required identifier.

(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 adds USDA back tags for slaughter animals as an acceptable form of an animal identifier.

(b) The necessity of the amendment to the administrative regulation: This is necessary to allow USDA back tags for slaughter animals as an acceptable form of an animal identifier.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 257.030 authorizes the Board of Agriculture to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes the general health requirements and provisions concerning interstate and intrastate movement of animals.

(d) How will this amendment assist in the effective administration of the statutes: This regulation will make easier the movement of animals by providing an additional option for the required identifier.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all person wishing to transport slaughter animals that may wish to exercise the option of using a USDA back tag as an identifier. As this identifier is not currently permitted, it is not feasible to estimate the number of persons this may affect. The OSV will be affected as the regulating entity.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not need to change any action should they not desire to.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred, as this identifier is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of another option will be available to the producer for an animal identifier.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

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

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Agriculture, Office of the State Veterinarian.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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 by this regulation.

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health
(Amendment)

302 KAR 20:050. Carcasses.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS Chapter 257, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160 provides for the disposition of dead carcasses in the proper manner to prevent the spread of contagion. This administrative regulation allows the animal to be transported from the farm in a proper manner.

Section 1. If the owner of a dead carcass is unable to dispose of it as provided for in KRS 257.160 by incineration, by composting at a permitted facility[~~burning, by cremation~~] or by burial it will be permissible to haul a dead carcass under these conditions: The bodies of dead animals transported over the highways by anyone must be covered with a tarpaulin or other heavy material and no portion of the dead animal can be exposed. The sides of trucks used must be of solid material. Flat bodied trucks with no sides and sides made of slat material with openings between slats are forbidden.

Section 2. The owner shall dispose of dead animals within forty-eight (48) hours after the carcass is found.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010, at 10 a.m., at Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31 2010. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation changes terminology from burning to incineration.

(b) The necessity of this administrative regulation: This is necessary to provide consistency with the statute and to emphasize that simple burning or a carcass is not permitted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030 (3) authorizes the board to order and enforce the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted, and the destruction of diseased and exposed animals and all such property and materials, as may be necessary in the eradication of disease. This administrative regulation establishes the requirements for transport of a carcass.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is necessary to provide consistency with the statute and to emphasize that simple burning or a carcass is not permitted. This change will aid in eliminating the possibility for confusion that burning may be permissible.

(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 changes terminology from burning to incineration.

(b) The necessity of the amendment to the administrative regulation: This is necessary to provide consistency with the statute and to emphasize that simple burning or a carcass is not permitted.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 257.030(3) authorizes the board to order and enforce the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted, and the destruction of diseased and exposed animals and all such property and materials, as may be necessary in the eradication of disease. This administrative regulation makes clear that burning a carcass is not permitted.

(d) How will this amendment assist in the effective administration of the statutes: This is necessary to provide consistency with the statute and to emphasize that simple burning or a carcass is not permitted. This change will aid in eliminating the possibility for confusion that burning may be permissible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all person wishing to transport animal carcasses in the commonwealth for disposal. Because this is a change in terminology, this regulation would not specifically effect anybody.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not need to change any action.

(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): No benefits will be incurred.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

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

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this regulation.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Agriculture.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030.

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 by this regulation.

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health
(Amendment)

302 KAR 20:115. Vesicular stomatitis.

RELATES TO: KRS 257.030, 257.230

STATUTORY AUTHORITY: KRS 257.030, 257.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

Section 1. General Provisions. (1) Prohibited entry into Kentucky.

(a) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any designated area or region in which vesicular stomatitis has been diagnosed. Any designated area or region shall be defined by the Kentucky State Veterinarian.

(b) Livestock, wild or exotic animals which have been in a vesicular stomatitis designated area or region shall not be permitted entry into Kentucky until they have been out of the designated area or region a minimum of twenty-one (21) days or the vesicular stomatitis designated area or region is released from restriction.

(c) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any state which does not have in place adequate requirements, as determined by the Kentucky State Veterinarian[~~chief livestock health official in Kentucky~~], governing the entry of the animals from states which have had vesicular stomatitis diagnosed.

(2) Vaccination.

(a) Livestock, wild or exotic animals in Kentucky shall not be vaccinated with an autogenous vesicular stomatitis virus vaccine without approval of the Kentucky State Veterinarian[~~and issued a conditional license by the United States Department of Agriculture's Animal and Plant Health Inspection Service~~].

(b) Livestock, wild or exotic animals which have been vaccinated with an autogenous vesicular stomatitis virus [~~vaccine and issued a conditional license by the USDA's Animal and Plant Health Inspection Service~~] shall not be permitted entry into Kentucky without approval of the Kentucky State Veterinarian.

(3) Testing. The Kentucky State Veterinarian may prescribe USDA approved testing as is deemed necessary to protect Kentucky's Livestock populations and industries based on extent of outbreak in the defined area(s), species affected, geographic region, and purpose of entry into Kentucky. The requirements for entry shall be posted on the Kentucky Department of Agriculture's web pages and shall include the prescribed testing assay, time testing is to be completed and all other relative information pertaining to entry into Kentucky.

(4) If testing is required,[~~All equidae, including suckling foals, originating from a state which has a common border with a state in which vesicular stomatitis has been diagnosed, shall be negative to either a serum neutralization test, a complement fixation test, or a C-ELISA test for a vesicular stomatitis as directed by the Office of the Kentucky State Veterinarian within ten (10) days prior to the animal's entry into Kentucky.~~] the certificate of veterinary inspection shall include the following:

(a) Testing laboratory;

(b) Test date;

(c) Accession number;

(d) Type of test and test results; and

(e) Complete name, address, city and state of both the consignor and consignee.

(4) Other requirements. All other entry requirements as found in 302 KAR 20:040 shall be met in full.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 30, 2010

FILED WITH LRC: July 2, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010, at 10 a.m., at Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31 2010. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation changes requirements for entry into Kentucky which have been exposed to vesicular stomatitis.

(b) The necessity of this administrative regulation: To prevent

entry of vesicular stomatitis into Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the entry requirements for animals that may have been exposed to vesicular stomatitis.

(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: Allows designation of areas or regions for VS, and reduces the time period for animals originating from areas where VS has been found.

(b) The necessity of the amendment to the administrative regulation: To prevent entry of vesicular stomatitis into Kentucky.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 257.030 authorizes the board to establish quarantine and other measures to control the movement of livestock into, through, or within the state. This administrative regulation establishes requirements for entry into Kentucky for livestock that has been exposed to vesicular stomatitis.

(d) How will this amendment assist in the effective administration of the statutes: This amended regulation makes clear the entry requirements for animals that may have been exposed to vesicular stomatitis.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all persons wishing to enter animals into Kentucky from an area where VS has been found. As this disease is sporadic in nature, it is impossible to guess the number of persons that would be affected. The probability for this to affect the average animal moving into Kentucky is very low.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will be required to test should the OSV require them to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will not incur costs unless required to do so for entry. The OSV estimates a test to cost $15.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance to Kentucky Agriculture are immeasurable. Should VS be allowed to enter the state, tremendous loss to all animal values in the state.

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

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Agriculture

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030, 257.070

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

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

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 48.010(15)(a), 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, 50 Appendices A-R, 51.100[~~(s)~~], 51.121, 51.165, 51.166, 51 Appendix S, 52.920, 53, 60, 60 Appendices A, B, 61, 61 Appendix B, 63 Appendices A-D, 70.2, 75, 82, 96, 42 U.S.C. 7401-7671q[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(5)[~~, EO 2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution.[~~EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.~~] This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO_2 or NOx imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions" is defined by 40 C.F.R. 51.166(b)(21).

(3) "Actuals PAL" or "PAL" is defined by 40 C.F.R. 51.166(w)(2)(i).

(4) "Adverse impact on visibility" is defined by 40 C.F.R. 51.301.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined by KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to

its normal operation.

(10) "Allocate" or "allocation" is defined by 40 C.F.R. 96.2.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" is defined by:

(a) 40 C.F.R. 51.166(b)(16); or

(b) 40 C.F.R. 51.166(w)(2)(ii) for an actuals PAL.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant, to which a standard applies, not previously emitted.

(14) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.

(15) "Ambient air" is defined by 40 C.F.R. 50.1(e).

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" is defined by 40 C.F.R. 51.166(b)(47).

(21) "Baseline area" is defined by 40 C.F.R. 51.166(b)(15).

(22) "Baseline concentration" is defined by 40 C.F.R. 51.166(b)(13).

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" is defined by 40 C.F.R. 51.166(b)(11).

(25) "Best available control technology" or "BACT" is defined by 40 C.F.R. 51.166(b)(12).

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" is defined by 40 C.F.R. 96.2.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" is defined by 40 C.F.R. 51.166(b)(6).

(30) "C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined by 40 C.F.R. 60.2.

(34) "Cfm" means cubic feet per minute.

(35) "CH_4" means methane.

(36) "Clean coal technology" is defined by 40 C.F.R. 51.166(b)(33).

(37) "Clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(34).

(38) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39) "CO" means carbon monoxide.

(40) "CO_2" means carbon dioxide.

(41) "COD" means chemical oxidant demand.

(42)"Combined cycle system" is defined by 40 C.F.R. 96.2.

(43) "Combustion turbine" is defined by 40 C.F.R. 96.2.

(44) "Commence":

(a) Means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) Is defined by 40 C.F.R. 51.166(b)(9) for the PSD or NSR program.

(45) "Commence commercial operation" is defined by 40 C.F.R. 96.2.

(46) "Commence operation" is defined by 40 C.F.R. 96.2.

(47) "Complete" is defined by 40 C.F.R. 51.166(b)(22).

(48) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49) "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50) "Construction":

(a) Means fabrication, erection, installation, or modification of an air contaminant source; or

(b) Is defined for use in the PSD or NSR program by 40 C.F.R. 51.166(b)(8).

(51) "Continuous emissions monitoring system" or "CEMS" is defined by:

(a) 40 C.F.R. 51.166(b)(43) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(xxxi) for 401 KAR 51:052.

(52) "Continuous emission monitoring system for NOx" or "CEMS for NOx" is defined by 40 C.F.R. 96.2.

(53) "Continuous emissions rate monitoring system" or "CERMS" is defined by 40 C.F.R. 51.166(b)(46).

(54) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(55) "Continuous parameter monitoring system" or "CPMS" is defined by:

(a) 40 C.F.R. 51.166(b)(45) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(xxxiii) for 401 KAR 51:052.

(56) "Control period" is defined by 40 C.F.R. 96.2.

(57) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.

(58) "District" is defined by KRS 224.01-010(11).

(59) "Dscf" means dry cubic feet at standard conditions.

(60) "Dscm" means dry cubic meter at standard conditions.

(61) "Electric generating unit" means, for 401 KAR 51:160 to 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62) "Electric utility steam generating unit" or "EUSGU" is defined by 40 C.F.R. 51.166(b)(30).

(63) "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64) "Emissions unit" is defined by:

(a) 40 C.F.R. 51.166(b)(7) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(vii) for 401 KAR 51:052.

(65) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source shall use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66) "Equivalent method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S.

EPA and the cabinet.

(67) "Excess NOx emissions" is defined by 40 C.F.R. 96.2.

(68) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69) "Existing source" means a source that is not a new source.

(70) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the national ambient air quality standard for ozone.

(71) "°F" means degree Fahrenheit.

(72) "Federal land manager" is defined by 40 C.F.R. 51.166(b)(24).

(73) "Federally enforceable" is defined by 40 C.F.R. 51.166(b)(17). For purposes of this definition, "administrator" means the U.S. EPA.

(74) "Federally-enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.

(75) "Fixed capital cost" is defined by 40 C.F.R. 51.166(b)(55).

(76) "Fossil fuel" is defined by 40 C.F.R. 96.2.

(77) "Fossil fuel fired" is defined by 40 C.F.R. 96.2.

(78) "ft" means feet or foot.

(79) "Fuel" means natural gas; petroleum; coal; wood; or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80) "Fugitive emissions":

(a) Means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening;

(b) Is defined by 40 C.F.R. 51.166(b)(20) for 401 KAR 51:017; or

(c) Is defined by 40 C.F.R. 51.165(a)(1)(ix) for 401 KAR 51:052.

(81) "g" means gram.

(82) "gal" means gallon.

(83) "General fund" is defined by KRS 48.010(15)(a).

(84) "Generator" is defined by 40 C.F.R. 96.2.

(85) "Gr" means grain.

(86) "HCl" means hydrochloric acid.

(87) "Heat input" is defined by 40 C.F.R. 96.2. For purposes of this definition, "administrator" means the cabinet.

(88) "HF" means hydrogen fluoride.

(89) "Hg" means mercury.

(90) "High terrain" is defined by 40 C.F.R. 51.166(b)(25).

(91) "hr" means hour.

(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93) "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94) "H_2O" means water.

(95) "H_2S" means hydrogen sulfide.

(96) "H_2SO_4" means sulfuric acid.

(97) "in" means inch.

(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100) "Innovative control technology" is defined by 40 C.F.R. 51.166(b)(19).

(101) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102) "J" means joule.

(103) "Kg" means kilogram.

(104) "l" means liter.

(105) "lb" means pound.

(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109) "Low terrain" means an area other than high terrain.

(110) "Lowest achievable emissions rate" or "LAER" is defined by 40 C.F.R. 51.165(a)(1)(xiii).

(111) "m" means meter.

(112) "m^3" means cubic meter.

(113) "Major emissions unit" is defined by 40 C.F.R. 51.166(w)(2)(iv).

(114) "Major modification" is defined by:

(a) 40 C.F.R. 51.166(b)(2) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(v) for 401 KAR 51:052.

(115)"Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116) "Major source" is defined by 40 C.F.R. 70.2. For purposes of 401 KAR Chapter 51, "subject to regulation" is defined by this administrative regulation.

(117) "Major source baseline date" is defined by 40 C.F.R. 51.166(b)(14)(i) and (iii).

(118) "Major stationary source" is defined by:

(a) 40 C.F.R. 51.166(b)(1) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(iv)(A)(1) for 401 KAR 51:052.

(119) "Malfunction" is defined by 40 C.F.R 60.2.

(120) "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the U.S. Department of Interior, has determined visibility to be an important value.

(121) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the national ambient air quality standard for ozone.

(122) "Maximum design heat input" is defined by 40 C.F.R. 96.2.

(123) "Maximum potential hourly heat input" is defined by 40 C.F.R. 96.2.

(124) "Maximum potential NOx emission rate" is defined by 40 C.F.R. 96.2.

(125) "Maximum rated hourly heat input" is defined by 40 C.F.R. 96.2.

(126) "Ug" means microgram

(127) "Mg" means milligram.

(128) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129) "min" means minute.

(130) "Minor source baseline date" is defined by 40 C.F.R 51.166(b)(14)(ii) - (iv).

(131) "MJ" means megajoules.

(132) "mm" means millimeter.

(133) "MM" means million.

(134) "mo" means month.

(135) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the national ambient air quality standard for ozone.

(136)(a) "Modification" is defined by 40 C.F.R 60.2.

(b) Exceptions to the definition of "modification" are listed in 40 C.F.R 60.14(e). For purposes of this definition, "administrator" means the cabinet.

(137) "Monitoring device" means the total equipment, required by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.

(138) "Monitoring system" means a monitoring system that

meets the requirements of 40 C.F.R. Part 96.

(139) "MWe" means megawatt electrical.

(140) "N_2" means nitrogen.

(141) "Nameplate capacity" is defined by 40 C.F.R. 96.2.

(142) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) "Necessary preconstruction approvals or permits" is defined by 40 C.F.R. 51.166(b)(10).

(144)(a) "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4), or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph are determined as defined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 51:052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM_{10} emissions are used to evaluate the net emissions increase for PM_{10}.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(147) "ng" means nanograms.

(148) "NO" means nitric oxide.

(149) "NO_2" means nitrogen dioxide.

(150) "Nonattainment major new source review program" or "NSR program" is defined by 40 C.F.R. 51.165(a)(1)(xxx). For purposes of this definition, "administrator" means the U.S. EPA.

(151) "NOx" means nitrogen oxides.

(152) "NOx allowance" is defined by 40 C.F.R. 96.2.

(153) "NOx Allowance Tracking System (NATS)" is defined by 40 C.F.R. 96.2 For purposes of this definition, "administrator" means the U.S. EPA.

(154) "NOx authorized account representative" is defined by 40 C.F.R. 96.2.

(155) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(156) "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(157) "NOx budget source" is defined by 40 C.F.R. 96.2.

(158) "NOx Budget Trading Program" is defined by 40 C.F.R. 96.2.

(159) "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160) "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(161) "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and unless expressly provided for in a leasehold agreement, does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(162) "O_2" means oxygen.

(163) "O_3" means ozone.

(164) "Opacity" is defined by 40 C.F.R. 60.2.

(165) "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166) "Operator" means, for a NOx budget unit, any person

who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167) "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168) "Owner", for a NOx budget unit, is defined by 40 C.F.R. 96.2.

(169) "Owner or operator" is defined by 40 C.F.R. 60.2.

(170) "oz" means ounce.

(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane (CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero-tenths (1.0).

(172) "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173) "PAL effective date" is defined by 40 C.F.R. 51.166(w)(2)(vi).

(174) "PAL effective period" is defined by 40 C.F.R. 51.166(w)(2)(vii).

(175) "PAL major modification" is defined by 40 C.F.R. 51.166(w)(2)(viii).

(176) "PAL permit" is defined by 40 C.F.R. 51.166(w)(2)(ix).

(177) "PAL pollutant" is defined by 40 C.F.R. 51.166(w)(2)(x).

(178) "Particulate matter" is defined by 40 C.F.R. 60.2.

(179) "Particulate matter emissions" is defined by 40 C.F.R. 51.100(pp), except as used in 40 C.F.R. Part 60.

(180) "Peak load" means the maximum instantaneous operating load.

(181) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182) "Person" is defined by KRS 224.01-010(17).

(183) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 51:052.

(184) "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185) "PM_{10}" is defined by 40 C.F.R. 51.100(qq).

(186) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(187) "Pollution prevention" is defined by 40 C.F.R. 51.166(b)(38).

(188) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcite and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) "Potential to emit" or "PTE":

(a) Means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401-7671q, or the term "capacity factor" as used in the Acid Rain Program;

(b) Is defined by 40 C.F.R. 51.166(b)(4) for 401 KAR 51:017; or

(c) Is defined by 40 C.F.R. 51.165(a)(1)(iii) for 401 KAR 51:052.

(191) "ppb" means parts per billion.

(192) "ppm" means parts per million.

(193) "ppm(w/w)" means parts per million (weight by weight).

(194) "Precalciner kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195) "Predictive emissions monitoring system" or "PEMS" is defined by 40 C.F.R. 51.166(b)(44).

(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) "Prevention of Significant Deterioration Program" or "PSD Program" is defined by 40 C.F.R. 51.166(b)(42).

(198) "Project" is defined by 40 C.F.R. 51.166(b)(51).

(199) "Projected actual emissions" is defined by 40 C.F.R 51.166(b)(40).

(200) "Psia" means pounds per square inch absolute.

(201) "psig" means pounds per square inch gage.

(202) "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) "Reactivation of a very clean coal-fired EUSGU" is defined by 40 C.F.R. 51.166(b)(37).

(204) "Reasonable further progress" is defined by 42 U.S.C. 7501(1). For purposes of this definition, "administrator" means the U.S. EPA.

(205) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207) "Regulated NSR pollutant" is defined by 40 C.F.R. 51.166(b)(49).

(208) "Replacement unit" is defined by 40 C.F.R. 51.166(b)(32).

(209) "Repowering" is defined by 40 C.F.R. 51.166(b)(36). For purposes of this definition, "administrator" means the U.S. EPA.

(210) "Responsible official" is defined by 40 C.F.R. 70.2.

(211) "Run" is defined by 40 C.F.R. 60.2.

(212) "S" means at standard conditions.

(213) "sec" means second.

(214) "Secondary emissions" is defined by 40 C.F.R. 51.166(b)(18).

(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the national ambient air quality standard for ozone.

(216) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the national ambient air quality standard for ozone.

(217) "Shutdown" means the cessation of an operation.

(218) "Significant" is defined by:

(a) 40 C.F.R. 51.166(b)(23) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(x) for 401 KAR 51:052.

(219) "Significant emissions increase" is defined by:

(a) 40 C.F.R. 51.166(b)(39) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(xxvii) for 401 KAR 51:052.

(220) "Significant emissions unit" is defined by:

(a) 40 C.F.R. 51.166(w)(2)(xi) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(f)(2)(xi) for 401 KAR 51:052.

(221) "Small emissions unit" is defined by:

(a) 40 C.F.R. 51.166(w)(2)(iii) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(f)(2)(iii) for 401 KAR 51:052.

(222) "SO_2" means sulfur dioxide.

(223) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224) "sq" means square.

(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227) "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg).

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228) "Start-up" or "startup" means the setting in operation of an affected facility.

(229) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230) "Stationary source" is defined by 40 C.F.R. 51.166(b)(5).

(231) "Subject to regulation" is defined by 40 C.F.R. 51.166(b)(48) for the PSD and NSR programs.

(232) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(233) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(234) "Temporary clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(35).

(235) "Ton" or "tonnage" for a NOx budget source is defined by 40 C.F.R. 96.2.

(236) "Total suspended particulates" or "TSP" is defined by 40 C.F.R. 51.100(ss).

(237) "Tpy" means tons per year.

(238) "TSS" means total suspended solids.

(239) "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(240) "Unit" is defined by 40 C.F.R. 96.2.

(241) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.

(242) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(243) "U.S. EPA" means the United States Environmental Protection Agency.

(244) "UTM" means Universal Transverse Mercator.

(245) "Visibility impairment" is defined by 40 C.F.R. 51.301.

(246) "Volatile organic compound" or "VOC" is defined by 40 C.F.R. 51.100(s).

(247) "Yd" means yard.

[~~Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO_2 or NOx imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.~~

~~(2) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:~~

~~(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation.~~

~~1. Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and~~

~~2.The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions.~~

~~(b) Source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166.~~

~~(c) For an emissions unit, that has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.~~

~~(d) This definition does not include:~~

~~1. Calculating if a significant emissions increase has occurred; or~~

~~2. Establishing a PAL under 401 KAR 51:017, Section 20.~~

~~(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.~~

~~(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Class I area. This determination:~~

~~(a) Is to be made on a case-by-case basis;~~

~~(b) Considers the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area; and~~

~~(c) Considers the frequency and timing of natural conditions that reduce visibility.~~

~~(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.~~

~~(6) "Air contaminant" is defined by KRS 224.01-010(1).~~

~~(7) "Air pollutant" means air contaminant.~~

~~(8) "Air pollution" is defined by KRS 224.01-010(3).~~

~~(9) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.~~

~~(10) "Allocate" or "allocation" means the determination by the cabinet of the number of NOx allowances to be credited to a NOx budget unit.~~

~~(11) "Allocation period" means each three (3) year period beginning May 1, 2004.~~

~~(12) "Allowable emissions" means:~~

~~(a) The emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally-enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the following:~~

~~1. The applicable standards codified in 40 C.F.R. Parts 60 and 61;~~

~~2. The applicable SIP emissions limitations, including those with a future compliance date; or~~

~~3. The emissions rates specified as a federally-enforceable permit condition, including those with a future compliance date; or~~

~~(b) For an actuals PAL, the emissions rate of a stationary source calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1 to 3 of this subsection.~~

~~(13) "Alteration" means:~~

~~(a) The installation or replacement of air pollution control equipment at a source; or~~

~~(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant, to which a standard applies, not previously emitted.~~

~~(14) "Alternative method" is defined by 40 C.F.R. 60.2. For~~

~~purposes of this definition, "administrator" means both U.S. EPA and the cabinet.~~

~~(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.~~

~~(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.~~

~~(17) "ANSI" means American National Standards Institute.~~

~~(18) "AOAC" means Association of Official Analytical Chemists.~~

~~(19) "ASTM" means American Society for Testing and Materials.~~

~~(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:~~

~~(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.~~

~~1. The rate is an average that:~~

~~a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;~~

~~b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and~~

~~c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;~~

~~2. Use of a cabinet-approved time period other than the twenty-four (24) month period is allowed, if a different time period is more representative of normal source operation; and~~

~~3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period allowed for each regulated NSR pollutant.~~

~~(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 51:052.~~

~~1. The rate is an average that:~~

~~a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;~~

~~b. Is adjusted downward:~~

~~(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;~~

~~(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and~~

~~(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and~~

~~c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and~~

~~2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.~~

~~(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.~~

~~(d) For a PAL for a stationary source, is determined as follows:~~

~~1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;~~

~~2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and~~

~~3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.~~

~~(21) "Baseline area" means an intrastate area, and every part of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ annual average of the pollutant for which the minor source baseline date is established.~~

~~(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) cannot intersect or be smaller than the area of impact of a major stationary source or major modification that:~~

~~1. Establishes a minor source baseline date; or~~

~~2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.~~

~~(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM_{10} increments, unless the cabinet rescinds the corresponding minor source baseline date.~~

~~(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.~~

~~(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:~~

~~1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and~~

~~2. The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.~~

~~(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase:~~

~~1. Actual emissions at a major source, that result from construction commencing after the major source baseline date; and~~

~~2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.~~

~~(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and~~

~~(a) For a major stationary source, the pollutant would be emitted in significant amounts; or~~

~~(b) For a major modification, there would be a significant net emissions increase of the pollutant.~~

~~(24) "Begin actual construction" means:~~

~~(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.~~

~~(b) For a change in method of operations, those on-site activities, other than the preparatory activities, that mark the initiation of the change.~~

~~(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:~~

~~(a) Is determined by the cabinet on a case-by-case basis pur-~~

~~suant to 40 C.F.R. 51.166(b)(12) after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;~~

~~(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in 40 C.F.R. Parts 60 and 61; and~~

~~(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:~~

~~1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;~~

~~2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and~~

~~3. The standard provides for compliance by means that achieve equivalent results.~~

~~(26) "BOD" means biochemical oxidant demand.~~

~~(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~

~~(28) "BTU" means British thermal unit.~~

~~(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:~~

~~(a) Belong to the same industrial grouping, or have the same two (2) digit major group code, as described in the Standard Industrial Classification Manual;~~

~~(b) Are located on one (1) or more contiguous or adjacent properties;~~

~~(c) Are under the control of the same person or persons under common control; and~~

~~(d) Do not include the activities of a vessel.~~

~~(30) "C" means degree Celsius (centigrade).~~

~~(31) "Cabinet" is defined by KRS 224.01-010(9).~~

~~(32) "Cal" means calorie.~~

~~(33) "Capital expenditure" is defined in 40 C.F.R. 60.2.~~

~~(34) "cfm" means cubic feet per minute.~~

~~(35) "CH_4" means methane.~~

~~(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.~~

~~(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:~~

~~(a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000; or~~

~~(b) To the U.S. EPA for a similar project.~~

~~(38) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.~~

~~(39) "CO" means carbon monoxide.~~

~~(40) "CO_2" means carbon dioxide.~~

~~(41) "COD" means chemical oxidant demand.~~

~~(42)"Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.~~

~~(43) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.~~

~~(44) "Commence" means that an owner or operator:~~

~~(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or~~

~~(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:~~

~~1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or~~

~~2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.~~

~~(45) "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:~~

~~(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.~~

~~(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.~~

~~(46) "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:~~

~~(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.~~

~~(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.~~

~~(47) "Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.~~

~~(48) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.~~

~~(49) "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:~~

~~(a) Allocated to NOx budget units that achieve early reduction; or~~

~~(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.~~

~~(50) "Construction" means:~~

~~(a) Fabrication, erection, installation, or modification of an air contaminant source; or~~

~~(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.~~

~~(51) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.~~

~~(52) "Continuous emissions monitoring system for NOx" or "CEMS for NOx" means the equipment required by 40 C.F.R. 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emissions monitoring system:~~

~~(a) Flow monitor;~~

~~(b) NOx pollutant concentration monitor;~~

~~(c) Diluent gas monitor (O_2 or CO_2) if required by 40 C.F.R. 96.70 to 96.76;~~

~~(d) Continuous moisture monitor if required by 40 C.F.R. 96.70 to 96.76; and~~

~~(e) Automated data acquisition and handling system.~~

~~(53) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.~~

~~(54) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.~~

~~(55) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 and 51:052 to:~~

~~(a) Monitor process and control device operational parameters such as control device secondary voltages and electric currents;~~

~~(b) Monitor other information such as gas flow rate and ozone or carbon dioxide concentrations; and~~

~~(c) Record average operational parameter values on a continuous basis.~~

~~(56) "Control period" means:~~

~~(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and~~

~~(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.~~

~~(57) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.~~

~~(58) "District" is defined by KRS 224.01-010(11).~~

~~(59) "dscf" means dry cubic feet at standard conditions.~~

~~(60) "dscm" means dry cubic meter at standard conditions.~~

~~(61) "Electric generating unit" means, for 401 KAR 51:160 to 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.~~

~~(62) "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:~~

~~(a) A steam electric generating unit constructed for the purpose of supplying for sale:~~

~~1. More than one-third (1/3) of its potential electric output capacity; and~~

~~2. More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and~~

~~(b) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.~~

~~(63) "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.~~

~~(64) "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 51:052, there are two (2) types of emissions units:~~

~~(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and~~

~~(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.~~

~~(65) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:~~

~~(a) Technically accurate emission standards and the portions of the source that are subject to the standards;~~

~~(b) A time period adequate to demonstrate compliance with the standards; and~~

~~(c) The method the source shall use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.~~

~~(66) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.~~

~~(67) "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.~~

~~(68) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.~~

~~(69) "Existing source" means a source that is not a new source.~~

~~(70) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.~~

~~(71) "°F" means degree Fahrenheit.~~

~~(72) "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.~~

~~(73) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:~~

~~(a) Requirements developed under 40 C.F.R. Parts 60 and 61;~~

~~(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and~~

~~(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.~~

~~(74) "Federally-enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.~~

~~(75) "Fixed capital cost" means the capital needed to provide all the depreciable components.~~

~~(76) "Fossil fuel" means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.~~

~~(77) "Fossil fuel fired" means, for a unit:~~

~~(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or~~

~~(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.~~

~~(78) "ft" means feet or foot.~~

~~(79) "Fuel" means natural gas; petroleum; coal; wood; or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.~~

~~(80) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.~~

~~(81) "g" means gram.~~

~~(82) "gal" means gallon.~~

~~(83) "General fund" is defined by KRS 48.010(15)(a).~~

~~(84) "Generator" means a device that produces electricity.~~

~~(85) "gr" means grain.~~

~~(86) "HCl" means hydrochloric acid.~~

~~(87) "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:~~

~~(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and~~

~~(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.~~

~~(88) "HF" means hydrogen fluoride.~~

~~(89) "Hg" means mercury.~~

~~(90) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.~~

~~(91) "hr" means hour.~~

~~(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.~~

~~(93) "Hydrocarbon combustion flare" means:~~

~~(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or~~

~~(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.~~

~~(94) "H_2O" means water.~~

~~(95) "H_2S" means hydrogen sulfide.~~

~~(96) "H_2SO_4" means sulfuric acid.~~

~~(97) "in" means inch.~~

~~(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.~~

~~(99) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.~~

~~(100) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but has a substantial likelihood of achieving:~~

~~(a) Greater continuous emissions reduction than any control system in current practice; or~~

~~(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.~~

~~(101) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.~~

~~(102) "J" means joule.~~

~~(103) "Kg" means kilogram.~~

~~(104) "l" means liter.~~

~~(105) "lb" means pound.~~

~~(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.~~

~~(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.~~

~~(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.~~

~~(109) "Low terrain" means an area other than high terrain.~~

~~(110) "Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on:~~

~~(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or~~

~~(b) The most stringent emissions limitation that is achieved in practice by the class or category of stationary sources.~~

~~1. If this limitation is applied to a modification, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.~~

~~2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.~~

~~(111) "m" means meter.~~

~~(112) "m^3" means cubic meter.~~

~~(113) "Major emissions unit" means:~~

~~(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or~~

~~(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401-7671q for nonattainment areas.~~

~~(114) "Major modification" is defined by 40 C.F.R. 51.165(a)(1)(v) for 401 KAR 51:052 and by 40 C.F.R. 51.166(b)(2) for 401 KAR 51:017.~~

~~(115)"Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.~~

~~(116) "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.~~

~~(117) "Major source baseline date" means:~~

~~(a) For particulate matter and sulfur dioxide, January 6, 1975; and~~

~~(b) For nitrogen dioxide, February 8, 1988.~~

~~(118)(a) "Major stationary source" means:~~

~~1.a. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that the following lower emissions thresholds apply:~~

~~(i) For ozone nonattainment areas: one hundred (100) tons per year or more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;~~

~~(ii) Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and~~

~~(iii) Seventy (70) tons per year or more of particulate matter (PM_{10}) in a serious PM_{10} nonattainment area; or~~

~~b.(i) For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;~~

~~(ii) Regardless of the stationary source size specified in subclause (i) of this clause, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or~~

~~2. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself.~~

~~(b) A major stationary source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone.~~

~~(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:~~

~~1. Coal cleaning plants with thermal dryers;~~

~~2. Kraft pulp mills;~~

~~3. Portland cement plants;~~

~~4. Primary zinc smelters;~~

~~5. Iron and steel mills;~~

~~6. Primary aluminum ore reduction plants;~~

~~7. Primary copper smelters;~~

~~8. Municipal incinerators capable of charging more than 250 tons of refuse per day;~~

~~9. Hydrofluoric, sulfuric, or nitric acid plants;~~

~~10. Petroleum refineries;~~

~~11. Lime plants;~~

~~12. Phosphate rock processing plants;~~

~~13. Coke oven batteries;~~

~~14. Sulfur recovery plants;~~

~~15. Carbon black plants (furnace process);~~

~~16. Primary lead smelters;~~

~~17. Fuel conversion plants;~~

~~18. Sintering plants;~~

~~19. Secondary metal production plants;~~

~~20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;~~

~~21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;~~

~~22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;~~

~~23. Taconite ore processing plants;~~

~~24. Glass fiber processing plants;~~

~~25. Charcoal production plants;~~

~~26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or~~

~~27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.~~

~~(119) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable.~~

~~(120) "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.~~

~~(121) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.~~

~~(122) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.~~

~~(123) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if a unit lacks certified monitors to report heat input and is:~~

~~(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D to report heat input; or~~

~~(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO_2 concentration (in percent CO_2) or the minimum percent O_2, if the unit intends to use a flow monitor and a diluent gas monitor.~~

~~(124) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O_2 or the minimum percent CO_2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction.~~

~~(125) "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.~~

~~(126) "μg" means microgram.~~

~~(127) "mg" means milligram.~~

~~(128) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:~~

~~(a) Burning part of the fuel at a lower temperature; and~~

~~(b) Reducing conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.~~

~~(129) "min" means minute.~~

~~(130) (a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to administrative regulations approved under the 40 C.F.R. 51.166 submits a complete application under applicable administrative regulations.~~

~~1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and~~

~~2. For nitrogen dioxide, the trigger date is February 8, 1988.~~

~~(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM_{10} increments, except that the cabinet may rescind the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv) if it is demonstrated to the satisfaction of the cabinet that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM_{10} emissions.~~

~~(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:~~

~~1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52; and~~

~~2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.~~

~~(131) "MJ" means megajoules.~~

~~(132) "mm" means millimeter.~~

~~(133) "MM" means million.~~

~~(134) "mo" means month.~~

~~(135) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.~~

~~(136) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:~~

~~(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and~~

~~(b) Is not solely:~~

~~1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;~~

~~2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;~~

~~3. An increase in the hours of operation;~~

~~4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;~~

~~5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);~~

~~6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or~~

~~7. The relocation or change in ownership of a source.~~

~~(137) "Monitoring device" means the total equipment, required by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.~~

~~(138) "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.~~

~~(139) "MWe" means megawatt electrical.~~

~~(140) "N_2" means nitrogen.~~

~~(141) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards pursuant to 40 C.F.R. 96.2.~~

~~(142) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.~~

~~(143) "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R.~~

~~52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401-7671q.~~

~~(144) (a) "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:~~

~~1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4), or 401 KAR 51:052, Section 1(2); and~~

~~2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph are determined as defined in this section.~~

~~(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:~~

~~1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and~~

~~2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs.~~

~~(c) An increase or decrease in actual emissions is creditable only if:~~

~~1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 51:052, or 40 C.F.R. 52.21; and~~

~~2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs.~~

~~(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM_{10} emissions are used to evaluate the net emissions increase for PM_{10}.~~

~~(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(f) A decrease in actual emissions is creditable only to the extent that:~~

~~1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;~~

~~2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and~~

~~3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.~~

~~(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.~~

~~(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.~~

~~(145) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.~~

~~(146) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.~~

~~(147) "ng" means nanograms.~~

~~(148) "NO" means nitric oxide.~~

~~(149) "NO_2" means nitrogen dioxide.~~

~~(150) "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.165 and 40 C.F.R. Part 51, Appendix S.~~

~~(151) "NOx" means nitrogen oxides.~~

~~(152) "NOx allowance" means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.~~

~~(153) "NOx Allowance Tracking System (NATS)" means the system by which the U.S. EPA records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.~~

~~(154) "NOx authorized account representative" means the person who is authorized by the owner or operator to:~~

~~(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 C.F.R. Part 96, Subpart B for a NOx budget source and all NOx budget units at the source; and~~

~~(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 C.F.R. Part 96, Subpart F, for a general account.~~

~~(155) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:~~

~~(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;~~

~~(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);~~

~~(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or~~

~~(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.~~

~~(156) "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.~~

~~(157) "NOx budget source" means a source that includes one (1) or more NOx budget units.~~

~~(158) "NOx Budget Trading Program" means the multistate NOx air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport of O_3, O_3 precursors, and NOx.~~

~~(159) "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.~~

~~(160) "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.~~

~~(161) "NOx budget unit owner" means:~~

~~(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;~~

~~(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;~~

~~(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and unless expressly provided for in a leasehold agreement, does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or~~

~~(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's own-~~

~~ership.~~

~~(162) "O_2" means oxygen.~~

~~(163) "O_3" means ozone.~~

~~(164) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.~~

~~(165) "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.~~

~~(166) "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.~~

~~(167) "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.~~

~~(168) "Owner" means, for a NOx budget unit, the following persons:~~

~~(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn;~~

~~(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;~~

~~(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and unless expressly provided for in a leasehold agreement, does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn; or~~

~~(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.~~

~~(169) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.~~

~~(170) "oz" means ounce.~~

~~(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichloroflouromethane(CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero tenths (1.0).~~

~~(172) "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.~~

~~(173) "PAL effective date" means:~~

~~(a) The date of issuance of the PAL permit; or~~

~~(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.~~

~~(174) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.~~

~~(175) "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.~~

~~(176) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.~~

~~(177) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.~~

~~(178) "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or a solid measured by an approved test method.~~

~~(179) "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.~~

~~(180) "Peak load" means the maximum instantaneous operating load.~~

~~(181) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.~~

~~(182) "Person" is defined by KRS 224.01-010(17).~~

~~(183) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 51:052.~~

~~(184) "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.~~

~~(185) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.~~

~~(186) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.~~

~~(187) "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include recycling, other than certain in-process recycling practices, energy recovery, treatment, or disposal.~~

~~(188) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.~~

~~(189) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.~~

~~(190) "Potential to emit" or "PTE" means:~~

~~(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:~~

~~1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation is enforceable as a practical matter; and~~

~~2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401-7671q, or the term "capacity factor" as used in the Acid Rain Program.~~

~~(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which:~~

~~1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:~~

~~a. Is federally enforceable; or~~

~~b. For an actuals PAL, is federally enforceable or enforceable as a practical matter; and~~

~~2. Secondary emissions are not counted.~~

~~(191) "ppb" means parts per billion.~~

~~(192) "ppm" means parts per million.~~

~~(193) "ppm(w/w)" means parts per million (weight by weight).~~

~~(194) "Precalciner kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.~~

~~(195) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process parameters, such as control device secondary voltages and electric currents, and to monitor control device operational parameters, such as gas flow rate, ozone concentrations or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.~~

~~(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.~~

~~(197) "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.~~

~~(198) "Project" means a physical change in or change in method of operation of an existing major stationary source.~~

~~(199) "Projected actual emissions" means:~~

~~(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:~~

~~1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and~~

~~2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.~~

~~(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:~~

~~1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity, filings with the cabinet and the U.S. EPA, and compliance plans under the Kentucky SIP;~~

~~b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and~~

~~c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or~~

~~2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.~~

~~(200) "psia" means pounds per square inch absolute.~~

~~(201) "psig" means pounds per square inch gage.~~

~~(202) "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.~~

~~(203) "Reactivation of a very clean coal-fired EUSGU" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:~~

~~(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;~~

~~(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;~~

~~(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and~~

~~(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671q.~~

~~(204) "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. 7501 to 7515 or may reasonably be required by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.~~

~~(205) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:~~

~~(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and~~

~~(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.~~

~~(206) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.~~

~~(207) "Regulated NSR pollutant" means the following:~~

~~(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the U.S. EPA;~~

~~(b) A pollutant subject to any standard promulgated under 42 U.S.C. 7411;~~

~~(c) A pollutant subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or~~

~~(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.~~

~~(208) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:~~

~~(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;~~

~~2. Is identical to or functionally equivalent to the replaced emissions unit; and~~

~~3. Does not alter the basic design parameters of the process unit.~~

~~(b) Replaces a unit that:~~

~~1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and~~

~~2. If brought back into operation, is considered a new emissions unit.~~

~~(209) "Repowering" means:~~

~~(a) Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:~~

~~1. Atmospheric or pressurized fluidized bed combustion;~~

~~2. Integrated gasification combined cycle;~~

~~3. Magneto hydrodynamics;~~

~~4. Direct and indirect coal-fired turbines;~~

~~5. Integrated gasification fuel cells; or~~

~~6. Pursuant to 40 C.F.R. 51.166, as determined by the U.S. EPA in consultation with the Secretary of Energy:~~

~~a. A derivative of one (1) or more of the technologies listed in subparagraphs 1 to 5 of this paragraph; or~~

~~b. Another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.~~

~~(b) An oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.~~

~~(c) A permit application from a source pursuant to this subsection receives expedited consideration by the cabinet and is granted~~

~~an extension under 42 U.S.C. 7651h.~~

~~(210) "Responsible official" means:~~

~~(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and~~

~~1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars; or~~

~~2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;~~

~~(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;~~

~~(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or~~

~~(d) For the acid rain portion of a permit for an affected source, the designated representative.~~

~~(211) "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.~~

~~(212) "S" means at standard conditions.~~

~~(213) "sec" means second.~~

~~(214) "Secondary emissions" means emissions that:~~

~~(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;~~

~~(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;~~

~~(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and~~

~~(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.~~

~~(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.~~

~~(216) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.~~

~~(217) "Shutdown" means the cessation of an operation.~~

~~(218) "Significant" means:~~

~~(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:~~

~~POLLUTANT~~	~~EMISSIONS RATE~~
~~Carbon monoxide~~	~~100 tons per year (tpy)~~
~~Ozone depleting substance~~	~~100 tpy~~
~~Nitrogen oxides~~	~~40 tpy~~
~~Sulfur dioxide~~	~~40 tpy~~
~~Particulate matter~~	~~25 tpy of particulate matter emissions~~
	~~15 tpy of PM_{10} emissions~~
~~Ozone~~	~~40 tpy of volatile organic compounds or nitrogen oxides~~
~~Lead~~	~~0.6 tpy~~
~~Fluorides~~	~~3 tpy~~
~~Sulfuric acid mist~~	~~7 tpy~~
~~Hydrogen sulfide (H_2S)~~	~~10 tpy~~
~~Total reduced sulfur (including H_2S)~~	~~10 tpy~~
~~Reduced sulfur compounds (including H_2S)~~	~~10 tpy~~
~~Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)~~	~~3.2×10^{-6} megagrams per year (Mg/y) (3.5×10^{-6} tpy)~~
~~Municipal waste combustor metals (measured as particulate matter)~~	~~14 Mg/y (15 tpy)~~
~~Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)~~	~~36 Mg/y (40 tpy)~~
~~Municipal solid waste landfill emissions (measured as nonmethane organic compounds)~~	~~35 Mg/y (50 tpy)~~

~~(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.~~

~~(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) $\mu g/m^3$ over a twenty-four (24) hour average.~~

~~(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:~~

~~POLLUTANT~~	~~EMISSIONS RATE~~
~~Carbon monoxide~~	~~100 tons per year (tpy)~~
~~Ozone depleting substance~~	~~100 tpy~~
~~Nitrogen oxides~~	~~40 tpy~~
~~Sulfur dioxide~~	~~40 tpy~~
~~Ozone~~	~~40 tpy of volatile organic compounds or nitrogen oxides~~
~~Lead~~	~~0.6 tpy~~

~~(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:~~

~~1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or~~

~~2. Any increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area.~~

~~(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contributes significantly to carbon monoxide levels.~~

~~(219) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.~~

~~(220) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount equal to or greater than the applicable significant level as defined in subsection (218) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.~~

~~(221) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.~~

~~(222) "SO_2" means sulfur dioxide.~~

~~(223) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or~~

~~other right of way.~~

~~(224) "sq" means square.~~

~~(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.~~

~~(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.~~

~~(227) "Standard conditions" means:~~

~~(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg).~~

~~(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).~~

~~(228) "Start-up" or "startup" means the setting in operation of an affected facility.~~

~~(229) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.~~

~~(230) "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.~~

~~(231) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.~~

~~(232) "TAPPI" means Technical Association of the Pulp and Paper Industry.~~

~~(233) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.~~

~~(234) "Ton" or "tonnage" means, for a NOx budget source, a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.~~

~~(235) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.~~

~~(236) "tpy" means tons per year.~~

~~(237) "TSS" means total suspended solids.~~

~~(238) "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.~~

~~(239) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.~~

~~(240) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.~~

~~(241) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.~~

~~(242) "U.S. EPA" means the United States Environmental Protection Agency.~~

~~(243) "UTM" means Universal Transverse Mercator.~~

~~(244) "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration, from that which would have existed under natural conditions.~~

~~(245) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).~~

~~(246) "yd" means yard.~~]

Section 2. Incorporation by Reference. (1) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 200 Fair Oaks Lane, 1st floor, Frankfort, Kentucky 40601-1403, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010, at 2 p.m. (local time) in Conference Room 201 B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 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 shall be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, ext. 4428, fax (502) 564-4666, email mailto:Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is given in KRS 224.10-100(5), which provides the cabinet the authority, power, and duty to prevent and control air pollution. KRS 224.10-100(26) requires the cabinet to issue regulations that are no more stringent than federal requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401

KAR Chapter 51.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises definitions to reflect amendments made to the New Source Review (NSR) program at the federal level. The Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule), published as a final rule on June 3, 2010, amends and creates definitions that significantly impact the Prevention of Significant Deterioration (PSD) and Title V permitting programs. The amendments are to the definitions for "Regulated NSR pollutant", which includes greenhouse gases (GHGs) as a regulated NSR pollutant under the Clean Air Act; "Major source", which includes air pollutants subject to regulation; and the inclusion of a definition for "Subject to regulation", which includes the greenhouse gas emission thresholds to trigger PSD and Title V permitting.

(b) The necessity of the amendment to this administrative regulation: The definition amendments are necessary at the state level to ensure consistency between state and federal programs. The Tailoring Rule establishes January 2, 2011, as the trigger date for GHGs to become regulated. If Kentucky's State Implementation Plan (SIP) is not revised by that date to include these requirements, the SIP will be found deficient, and the U.S. EPA will have authority to issue a Federal Implementation Plan (FIP). Serious consequences of a FIP include loss of PSD and Title V program approvals and loss of federal highway funds. EPA clearly states their intent in the preamble to the final rule, "For any state that lacks the ability to issue PSD or Title V permits for GHG emissions sources consistent with the final rule, we [EPA] intend to undertake a separate action to call for revisions to these programs. We [EPA] also intend to move quickly to impose a FIP for PSD through 40 C.F.R. 52.21, and use our federal Title V authority to ensure that GHG sources will be permitted consistent with the final rule." This amendment also clarifies that small businesses will not be regulated solely because of their greenhouse gas emissions by tailoring the threshold limits.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(26) requires the cabinet to issue regulations that are no more stringent than federal requirements. This amendment maintains consistency with corresponding federal definitions affecting Kentucky's PSD and Title V permitting programs.

(d)How the amendment will assist in the effective administration of statutes: This amendment will provide clear and consistent definitions of terms used in 401 KAR Chapter 51 to prevent and control air pollution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any facility with the capacity to emit greenhouse gases at or above the thresholds specified in the GHG Tailoring Rule, which changes to 401 KAR 51:001 incorporate, would be affected by the changes to this regulation. This includes PSD and Title V sources of greenhouse gas emissions but does not affect smaller emitters of greenhouse gases. EPA has estimated that without the Tailoring Rule there would be 82,000 permitting actions nationwide per year necessary to address greenhouse gas emissions, but with the implementation of the rule that number is reduced to 1,600 nationwide. The Division for Air Quality has estimated this regulation change to affect 30 – 40 permitting actions per year in Kentucky. If these amendments are not made, the U.S. EPA will find Kentucky's SIP deficient and exercise their authority to issue a construction ban to prevent the construction or modification of a major emitting facility (pursuant to CAA §167) until a FIP is issued.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Changes to the current regulation will include the regulation of greenhouse gas emissions. For those sources emitting at or above the major source threshold for greenhouse gas emissions, new permits will have to be issued.

(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: Sources permitted under the Title V program will have to submit a permit application identifying and reporting the emissions but there will be no new requirements or standards imposed on the source. Sources permitted under the PSD program will have to submit a permit application including Best Available Control Technology (BACT) review for greenhouse gas emissions.

(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 emission fees associated with the regulation of greenhouse gas emissions. For those sources that must provide a BACT analysis, there is the additional cost to meet the requirements of the BACT determination. Additionally, sources required to obtain a new permit will have the expense of completing a permit application. EPA has estimated that a Title V permit application for greenhouse gas sources would cost each source, on average, between $23,200 and $46,400.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These major sources will remain in compliance with state and federal regulations.

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

(a) Initially: The inclusion of greenhouse gases in stationary source permits will require the Division for Air Quality to expand staff to review the increased permit load and inspect changes made to sources as a result of this regulation.

(b) On a continuing basis: The cabinet must maintain the additional staff in order to handle the increase in permit issuance. EPA has estimated that a Title V permit application for greenhouse gas sources would cost a permitting authority, on average, between $9,844 and $19,688 to process each source permit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any additional expense incurred by the Division for Air Quality to regulate greenhouse gas emissions would be paid for through Title V emission fees. The cabinet is not requesting additional general funds for the implementation and enforcement of the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The cabinet is not requesting additional general funds for the implementation of this administrative regulation. However, Title V emission fees may be impacted by the implementation of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees, but as stated above in (7), Title V emission fees may be impacted.

(9) TIERING: Is tiering applied? Yes. The Tailoring Rule amends the threshold of greenhouse gas emission levels subject to regulation. This tiering revision was necessary to prevent small businesses and individuals from becoming subject to permitting requirements solely due to greenhouse gas emissions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the PSD program under 40 C.F.R. 51.166, recent changes in the federal PSD/NSR and Title V programs make it necessary to revise the regulation in order to maintain federal approvability. Failure to do so will result in a Federal Implementation Plan.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. Changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal defini-

tions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division for Air Quality as the applicability of other administrative regulations is altered. Any state or local government that emits greenhouse gases in the thresholds subject to the PSD or Title V permitting programs would be required to obtain a permit from the Division for Air Quality.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), (26); 42 U.S.C. 7401, 7410, 7471, 7607; 40 C.F.R. 51.166.

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 does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(c) How much will it cost to administer this program for the first year? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 - 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

(d) How much will it cost to administer this program for subsequent years? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 - 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 50-53, 60-63, 70-78, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet[~~Environmental and Public Protection Cabinet~~] to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid Rain Program" means the national program for reducing SO_2 and NOx emissions established under 42 U.S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7671q.

(3) "Actual emissions" is defined by 40 C.F.R. 51.166(b)(21).[~~means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.~~]

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected state"[~~states"~~] means state[~~states~~] that:

(a) Borders[~~Border~~] Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Is[~~Are~~] situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined by[~~in~~] KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined by[~~in~~] KRS 224.01-010(3).

(11) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" is defined by 40 C.F.R. 60.2. For purposed of this definition, "administrator" means both the U.S. EPA and the cabinet.[~~means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.~~]

(13) "Ambient air" is defined by 40 C.F.R. 50.1(e).[~~means that portion of the atmosphere, external to buildings, to which the general public has access.~~]

(14) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined by KRS 224.01-010(9).[~~in KRS 224.01-010.~~]

(18) "Capital expenditure" is defined by[~~in~~] 40 C.F.R. 60.2.

(19) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(20) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 Chapters 50-65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(22) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(24) "Designated representative" means a person authorized by the owner or operator[~~owners or operators~~] of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accor-

dance with 40 C.F.R. 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official", as defined in this section, means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source that:[~~which:~~]

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and

(c) Does[~~Shall~~] not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.

(30) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.[~~"Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.~~

~~(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.~~

~~(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.~~]

(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(32) "Equivalent method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.[~~means a method of sampling and analyzing for an air pollutant, that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.~~]

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means an item specified in this subsection as it applies to an emission unit at a source subject to 40 C.F.R. Part 70, including a requirement promulgated or approved by the U.S. EPA in conjunction with the permit issuance but which has future-effective compliance dates.

(a) A standard or requirement in the SIP that implements the relevant requirements of the Act, including a revision to that plan promulgated at 40 C.F.R. Part 52;

(b) A term or condition of a preconstruction permit issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) A standard or requirement of the Acid Rain Program;

(f) A requirement established pursuant to 42 U.S.C. 7414(a)(3) or 7661c(b) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for a temporary source permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for a tank vessel adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.[~~"Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:~~

~~(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52;~~

~~(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;~~

~~(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;~~

~~(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;~~

~~(e) Standards or requirements of the Acid Rain Program;~~

~~(f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;~~

~~(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for temporary sources permitted pursuant to 42 U.S.C. 7661c(e);~~

~~(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);~~

~~(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and~~

~~(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.~~]

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made; or[~~.~~]

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52:040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas; petroleum; coal; wood[~~gas, petroleum, coal, wood,~~] or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than

any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" is defined by 40 C.F.R. 70.2. For purposes of 401 KAR Chapter 52, "subject to regulation: is defined by this administrative regulation".[~~means a stationary source or a group of stationary sources that emits or has a potential to emit at or above a major source threshold and:~~

~~(a) For HAPs:~~

~~1. Is located within a contiguous area;~~

~~2. Is under common control;~~

~~3. Includes all fugitive HAP emissions in determining if the source is major; and~~

~~4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:~~

~~a. Oil or gas exploration or production wells and the associated equipment; or~~

~~b. Pipeline compressors or pump stations; and~~

~~(b) For regulated air pollutants other than HAPs:~~

~~1. Is located on one (1) or more contiguous or adjacent properties;~~

~~2. Is under common control;~~

~~3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and~~

~~4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:~~

~~a. Coal cleaning plants (with thermal dryers);~~

~~b. Kraft pulp mills;~~

~~c. Portland cement plants;~~

~~d. Primary zinc smelters;~~

~~e. Iron and steel mills;~~

~~f. Primary aluminum ore reduction plants;~~

~~g. Primary copper smelters;~~

~~h. Municipal incinerators capable of charging more than 250 tons of refuse per day;~~

~~i. Hydrofluoric, sulfuric, or nitric acid plants;~~

~~j. Petroleum refineries;~~

~~k. Lime plants;~~

~~l. Phosphate rock processing plants;~~

~~m. Coke oven batteries;~~

~~n. Sulfur recovery plants;~~

~~o. Carbon black plants (furnace process);~~

~~p. Primary lead smelters;~~

~~q. Fuel conversion plants;~~

~~r. Sintering plants;~~

~~s. Secondary metal production plants;~~

~~t. Chemical process plants;~~

~~u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;~~

~~v. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;~~

~~w. Taconite ore processing plants;~~

~~x. Glass fiber processing plants;~~

~~y. Charcoal production plants;~~

~~z. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or~~

~~aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).~~]

(46) "Major source threshold" means PTE:

(a) For HAPs:

1. Ten (10) tons per year or more of a single HAP;

2. Twenty-five (25) tons per year or more of combined HAPs; or

3. A lesser quantity that the U.S. EPA establishes in a final rulemaking; or

(b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:

1. For ozone nonattainment areas:

a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;

b. Fifty (50) tons per year or more in areas classified as serious;

c. Twenty-five (25) tons per year or more in areas classified as severe; or

d. Ten (10) tons per year or more in areas classified as extreme;

2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels; or

3. Seventy (70) tons per year or more of particulate matter (PM_{10}) for PM_{10} nonattainment areas classified as serious.

(47) "Malfunction" is defined by 40 C.F.R. 60.2.[~~means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.~~]

(48) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the [~~one (1) hour~~] national ambient air quality standard for ozone [~~in 401 KAR 51:010~~].

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the [~~one (1) hour~~] national ambient air quality standard for ozone[~~in 401 KAR 51:010~~].

(51)(a) "Modification" is defined by 40 C.F.R. 60.2.

(b) Exceptions to the definition of "modification" are listed in 40 C.F.R. 60.14(e). For purposes of this definition, "administrator" means the cabinet.[~~means any physical change in, or a change in the method of operation of, an affected facility that:~~

~~(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and~~

~~(b) Is not solely:~~

~~1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;~~

~~2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;~~

~~3. An increase in the hours of operation;~~

~~4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.~~

~~5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);~~

~~6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or~~

~~7. The relocation or change in ownership of a source.~~]

(52) "Modification under Title I of the Act" means a change at a facility that constitutes[~~would constitute~~] a modification under 42 U.S.C. 7470 to 7492 or 42 U.S.C. 7501 to 7515.

(53) "Opacity" is defined by 40 C.F.R. 60.2.[~~means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.~~]

(54) "Owner or operator" is defined by 40 C.F.R. 60.2.[~~means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.~~]

(55) "Person" is defined by KRS 224.01-010(17).[~~means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.~~]

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and

operational design in which[where]:

(a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed is[shall be] treated as part of its design if the limitation is enforceable as a practical matter; and

(b) This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for a forty-five (45) day review period.

(58) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 65.[68.]

(59) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411;

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "Responsible official" is defined by 40 C.F.R. 70.2.[means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.]

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(64) "Shutdown" means the cessation of an operation.

(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard promulgated in 401 KAR Chapters 50 to 65[the administrative regulations of the Division for Air] Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(67) "Start-up" or "startup" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, that[which] has been approved by the U.S. EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

(72) "Subject to regulation" is defined by 40 C.F.R. 70.2 for the Title V program.

(73) "Title V permit" means a permit issued under Kentucky's Title V program.

(74)[pursuant to 401 KAR 52:020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.

(73)] "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).

(75)[(74)] "Total suspended particulates" or "TSP" is defined by 40 C.F.R. 51.100(ss).

(76)[means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(75)] "Tpy" means ton per year.

(77)[(76)] "U.S. EPA" means the U.S. Environmental Protection Agency.

(78)[(77)] "Volatile organic compound" or "VOC" is defined by[in] 40 C.F.R. 51.100(s).

(79)[(78)] "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010, at 2 p.m. (local time) in Conference Room 201 B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 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 shall be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, email Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 52.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 52.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is given in KRS 224.10-100(5), which provides the cabinet the authority, power, and duty to prevent and control air pollution. KRS 224.10-100(26) requires the cabinet to issue regulations that are no more stringent than federal requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401 KAR Chapter 52.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises definitions to reflect amendments made to the New Source Review (NSR) program at the federal level. The Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule), published as a final rule on June 3, 2010, amends and creates definitions that significantly impact the Prevention of Significant Deterioration (PSD) and Title V permitting programs. The amendments are to the definitions for "Regulated NSR pollutant", which includes greenhouse gases (GHGs) as a regulated NSR pollutant under the Clean Air Act; "Major source", which includes air pollutants subject to regulation; and the inclusion of a definition for "Subject to regulation", which includes the greenhouse gas emission thresholds to trigger PSD and Title V permitting.

(b) The necessity of the amendment to this administrative regulation: The definition amendments are necessary at the state level to ensure consistency between state and federal programs. The Tailoring Rule establishes January 2, 2011, as the trigger date for GHGs to become regulated. If Kentucky's State Implementation Plan (SIP) is not revised by that date to include these requirements, the SIP will be found deficient, and the U.S. EPA will have authority to issue a Federal Implementation Plan (FIP). Serious consequences of a FIP include loss of PSD and Title V program approvals and loss of federal highway funds. EPA clearly states their intent in the preamble to the final rule, "For any state that lacks the ability to issue PSD or Title V permits for GHG emissions sources consistent with the final rule, we [EPA] intend to undertake a separate action to call for revisions to these programs. We [EPA] also intend to move quickly to impose a FIP for PSD through 40 C.F.R. 52.21, and use our federal Title V authority to ensure that GHG sources will be permitted consistent with the final rule." This amendment also clarifies that small businesses will not be regulated solely because of their greenhouse gas emissions by tailoring the threshold limits.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(26) requires the cabinet to issue regulations that are no more stringent than federal requirements. This amendment maintains consistency with corresponding federal definitions affecting Kentucky's PSD and Title V permitting programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will provide clear and consistent definitions of terms used in 401 KAR Chapter 52 to prevent and control air pollution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any facility with the capacity to emit greenhouse gases at or above the thresholds specified in the GHG Tailoring Rule, which changes to 401 KAR 52:001 incorporate, would be affected by the changes to this regulation. This includes PSD and Title V sources of greenhouse gas emissions but does not affect smaller emitters of greenhouse gases. EPA has estimated that without the Tailoring Rule there would be 82,000 permitting actions nationwide per year necessary to address greenhouse gas emissions, but with the implementation of the rule that number is reduced to 1,600 nationwide. The Division for Air Quality has estimated this regulation change to affect 30 - 40 permitting actions per year in Kentucky. If these amendments are not made, the U.S. EPA will find Kentucky's SIP deficient and exercise their authority to issue a construction ban to prevent the construction or modification of a major emitting facility (pursuant to CAA §167) until a FIP is issued.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Changes to the current regulation will include the regulation of greenhouse gas emissions. For those sources emitting at or above the major source threshold for greenhouse gas emissions, new permits will have to be issued.

(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: Sources permitted under the Title V program will have to submit a permit application identifying and reporting the emissions but there will be no new requirements or standards imposed on the source. Sources permitted under the PSD program will have to submit a permit application including Best Available Control Technology (BACT) review for greenhouse gas emissions.

(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 emission fees associated with the regulation of greenhouse gas emissions. For those sources that must provide a BACT analysis, there is the additional cost to meet the requirements of the BACT determination. Additionally, sources required to obtain a new permit will have the expense of completing a permit application. EPA has estimated that a Title V permit application for greenhouse gas sources would cost each source, on average, between $23,200 and $46,400.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These major sources will remain in compliance with state and federal regulations.

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

(a) Initially: The inclusion of greenhouse gases in stationary source permits will require the Division for Air Quality to expand staff to review the increased permit load and inspect changes made to sources as a result of this regulation.

(b) On a continuing basis: The cabinet must maintain the additional staff in order to handle the increase in permit issuance. EPA has estimated that a Title V permit application for greenhouse gas sources would cost a permitting authority, on average, between $9,844 and $19,688 to process each source permit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any additional expense incurred by the Division for Air Quality to regulate greenhouse gas emissions would be paid for through Title V emission fees. The cabinet is not requesting additional general funds for the implementation and enforcement of the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The cabinet is not requesting additional general funds for the implementation of this administrative regulation. However, Title V emission fees may be impacted by the implementation of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees, but as stated above in (7), Title V emission fees may be impacted.

(9) TIERING: Is tiering applied? Yes. The Tailoring Rule amends the threshold of greenhouse gas emission levels subject to regulation. This tiering revision was necessary to prevent small businesses and individuals from becoming subject to permitting requirements solely due to greenhouse gas emissions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the PSD program under 40 C.F.R. 51.166, recent changes in the federal PSD/NSR and Title V programs make it necessary to revise the regulation in order to maintain federal approvability. Failure to do so will result in a Federal Implementation Plan.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. Changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division for Air Quality as the applicability of other administrative regulations is altered. Any state or local government that emits greenhouse gases in the thresholds subject to the PSD or Title V permitting programs would be required to obtain a permit from the Division for Air Quality.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), (26); 42 U.S.C. 7401, 7410, 7471, 7607; 40 C.F.R. 51.166.

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 does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(c) How much will it cost to administer this program for the first year? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 - 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

(d) How much will it cost to administer this program for subsequent years? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 - 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

JUSTICE AND PUBLIC SAFETY CABINET
Office of the Secretary
(Amendment)

500 KAR 2:020. Filing and processing SLEO commissions.

RELATES TO: KRS 61.900-61.930
STATUTORY AUTHORITY: KRS. 61.904
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.904 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. This administrative regulation establishes the criteria and procedures required for filing and processing applications for commissions to be a special law enforcement officer.

Section 1. Definitions. (1) "Cabinet" means the Justice and Public safety Cabinet.

(2) "SLEO Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.930.

(3) "SLEO program administrator" means the person designated or appointed by the Secretary of the Justice and Public Safety Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Justice and Public Safety Cabinet whose address is: SLEO Program Administrator, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601.

Section 2. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a special law enforcement officer pursuant to KRS 61.900 to 61.930, an individual shall comply with the conditions and requirements set forth in KRS 61.906.

Section 3. Application for Commission as a Special Law Enforcement Officer. (1) An applicant shall meet all of the requirements of the SLEO Act before a commission is granted.

(2) An applicant shall provide to the governmental unit two (2) complete signed and notarized SLEO Application Forms (SLEO-1).

(3) The governmental unit shall submit both application forms to the Justice and Public Safety Cabinet SLEO Program Administrator.

(4) The application forms shall contain the following information:

(a) The name, address, telephone number, and detailed personal description of and information about the applicant; and

(b) All arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies as requested on the application and any other information necessary to conduct a criminal history check.

(5) Any false, misleading, or withholding of information requested on the application or by the cabinet investigator may[~~shall~~] be grounds for rejection without further consideration.

Section 4. Additional Requirements. (1) In addition to the application form, an applicant shall provide to the governmental unit who shall submit to the SLEO Program Administrator the following with his or her application:

(a) A copy of the applicant's high school diploma or GED;

(b) A certified copy of the applicant's birth certificate;

(c) Two (2) recent photographs of the individual (full face) measuring not larger than three (3) inches by five (5) inches and taken within the last thirty (30) days of the date the application is submitted;

(d) If the applicant is a veteran, a copy of his or her military release (Form DD-214);

(e) An Authority to Release Information Form, SLEO-2, which allows the release of all necessary information to the SLEO program administrator. It shall be signed by the applicant and witnessed by a second person;

(f) A Letter of Intent Form, SLEO-3, completed by the governmental unit giving the name of the applicant, the specific public property to be protected, and the signature of the authorizing official of the requesting governmental unit;

(g) Proof that the applicant has completed a recognized course and is certified in first aid and CPR. This requirement may be waived if the agency hiring the applicant has full-time EMT's on staff; and

(h) The application fee.

(2) If not on file from a pervious application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601[~~the applicant's fingerprints are not on file with the Kentucky State Police Criminal Record Section, the SLEO program administrator shall make arrangements to have the applicant fingerprinted~~].

(3) The applicant shall arrange for and be interviewed by the SLEO program administrator before a commission is granted.

(4) All SLEO applicants shall sign and the governmental unit submit to the cabinet the SLEO Acknowledgement Notice Form, SLEO-4, which indicates that he:

(a) Has received, read, and understands:

1. Provisions of the SLEO Act, KRS 61.900-61.930;

2. Administrative regulations in 500 KAR Chapter 2;

3. Penalties imposed for violating the SLEO Act and its administrative regulations; and

4. KRS 61.300, 61.990, 61.991, 62.010, and 62.990;

(b) Acknowledges that his authority is limited and restricted under the SLEO Act; and

(c) Understands and acknowledges that his commission as a SLEO does not give him the right or authority to carry a concealed weapon off the premises of the public property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110 or meets the requirements or 18 U.S.C. 926B or 926C.

Section 5. Fees. (1) All fees required by KRS 61.908 shall be paid in advance and are nonrefundable.

(2) Fees shall be paid in the form of a check or money order payable to the Kentucky State Treasurer.

Section 6. Approval of Application. (1) If the applications and all required documents are in order, and if the criminal history information record review and background investigation are favorably completed, the governmental unit for whom the SLEO applicant will be employed shall notify the Department of Criminal Justice Training concerning any training the applicant needs in order to satisfy the requirements of KRS 61.906(2)(f).

(2) In notifying the Department of Criminal Justice Training, the governmental unit shall describe the training needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and collect the related fees as prescribed in KRS 61.908(3), (4), and (5). An applicant that has successfully completed the training previously shall not be required to repeat the course.

(3) The Department of Criminal Justice Training shall notify the governmental unit of the results of the training upon completion.

Section 7. Receipt of Defective or Falsified Application. (1) If the application is defective or in conflict with the SLEO Act or administrative regulations, the cabinet shall notify the governmental unit.

(2) An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator[~~original submission date~~].

(3) An application that has [~~intentionally~~] been falsified or contains material omissions or contains incomplete information may be rejected and the applicant shall be prohibited from submitting an application for commission as a SLEO for at least one (1) year[~~shall be rejected~~].

Section 8. The Grant of the Commission and the Required Oath of Office. (1) A commission for a special law enforcement officer shall be validated and granted as follows:

(a) If the applicant has successfully satisfied the requirements of the act and a commission has been granted, a commission certificate and a recommendation shall be forwarded by the SLEO program administrator to the secretary for review.

(b) After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file maintained by the cabinet.

(2) The governmental unit shall be notified that the commission has been granted. An original of the application with two (2) [~~original~~] County Clerk Oath verification forms (SLEO-6)[~~pages, (SLEO-1, page 7)~~] shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(3) The appointed applicant shall take:

(a) An original of the application with two (2) [~~original~~] County Clerk Oath verification forms[~~pages~~] to the county clerk in the county where the applicant is to serve; and

(b) The constitutional oath of office within thirty (30) days after notice of appointment.

(4) The county clerk shall then:

(a) Complete and sign the clerk's attestation on both of the two (2) SLEO-6[~~signature pages of the original application~~];

(b) Retain one (1) copy of the entire original application, including one (1) of the County Clerk Oath verification pages, for filing purposes in the county clerk's office; and

(c) Give the second original copy of the County Clerk Oath verification page, signed by the clerk, to the applicant.

(5) The applicant shall return the second original copy of the County Clerk Oath verification page, signed by the Clerk, to the governmental unit, which shall return it to the cabinet SLEO program administrator for the purpose of indicating that the oath was administered and that it is filed with the county clerk.

(6) Upon receipt of the oath verification, the commission shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(7) The governmental unit shall:

(a) Arrange for the appointed applicant to take the oath of office; and

(b) Return the County Clerk Oath verification to the cabinet program administrator within thirty (30) days.

(8) If the second original copy of the County Clerk Oath verification page, signed by the clerk is not returned with thirty (30) days, the commission shall be null and void and the applicant shall be required to repeat the application process.

(9) The applicant shall not exercise the authority of a SLEO until he or she has received the commission certificate from the cabinet.

(10) The commission certificate shall be kept by the governmental unit so long as the officer is employed or until his or her authority is terminated by action of the local government unit or the cabinet secretary.

(11)[~~(10)~~] The SLEO Commissions shall be issued for a period of two (2) years if the officer continues to meet all statutory and regulatory criteria.

(12)[~~(11)~~] After the SLEO officer has received the SLEO commission certificate[~~taken the constitutional oath of office~~], the governmental unit shall issue an identification card which is to be carried by the SLEO officer whenever he or she is acting under the authority of KRS 61.900-61.930.

(13)[~~(12)~~] The identification card shall be:

(a) Presented as requested by any duly sworn peace officer or cabinet official;

(b) Subject to control by the cabinet; and

(c) Comply with the provisions of Section 11(5) of this administrative regulation.

(14)[~~(13)~~] If for any reason a SLEO officer is terminated or otherwise relieved of his duties as a SLEO officer by the governmental unit or the cabinet, he or she shall immediately return this identification card to the officer's governmental unit[~~who shall return the same to the SLEO program administrator~~].

(15)[~~(14)~~] The SLEO commission certificate shall be held by the governmental units and shall:

(a) Be available for inspection by the cabinet program administrator or his designee;

(b) Remain the property of the cabinet; and

(c) Be returned upon the officer's authority being withdrawn for any reason.

Section 9. Special Provisions. (1) Special Local Peace Officers

meeting the requirements of KRS 61.906(2)(f)3 may apply for commission as a SLEO in the following manner:

(a) An official for the governmental unit shall sign and submit a new set of applications with the filing fee on behalf of the applicant; and

(b) The applicant shall undergo a current background investigation.

(2) Training waiver. A SLEO applicant may apply for a training waiver by providing sufficient proof of past police experience, or military records, or examination records, that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906(2)(f)2.

Section 10. Renewals. (1) A letter of intent from the governmental unit stating its request to renew a commission and two (2) complete signed and notarized SLEO Renewal Application Forms (SLEO-5)[~~a new set of applications~~] for each individual involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission.

(2) The applicant for renewal shall undergo a background investigation to bring his records up-to-date.

Section 11. Governmental Units Employing SLEO Officers - Records, Reports, and Responsibility.

(1) All governmental units employing SLEO officers shall:

(a) Keep their files current as to the expiration date on each officer's commission;

(b) Keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer and his authority;

(c) Provide proof to the SLEO program coordinator at the time of request for renewal that its SLEOs are currently certified in First Aid and CPR and have met the same marksmanship qualification required of certified peace officers in KRS 15.383; and

(d) Mail or e-mail to the SLEO program administrator by June 30 of each year:

1.[~~mail~~] A current list of all active SLEO personnel; and

2. The number of arrests made or citations issued by the agency the previous calendar year[~~to the SLEO program administrator by June 30 each year~~].

(2) The unit shall post a copy of the SLEO administrative regulations, 500 KAR Chapter 2, and a copy of KRS 61.900-61.930, 61.990, and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEO officers.

(3) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental unit whose public property is being protected by the SLEO officer involved. However, the governmental unit shall notify the cabinet SLEO program administrator by:

(a) Direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEO officers; and

(b) A follow-up written report to be filed with the SLEO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by governmental unit.

(4) If formal charges are pending, the unit or agency shall advise the SLEO program administrator as to the specific charge, trial date and the final disposition of the charge.

(5) The unit shall issue each SLEO officer an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches); and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Law Enforcement Officer (SLEO), pursuant to KRS 61.902. As a SLEO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the powers of a peace officer in accordance with KRS 61.900 to 61.930"; and

2. The other side containing a full-faced photograph of the officer with his or her:

a. Name;

b. Identification or notation that the officer has been commissioned a "Special Law Enforcement Officer";

c. Governmental unit employing the officer;

d. Badge number, if any; and

e. Signature of the officer's chief, supervisor, or employer.

(6) The unit shall obtain and destroy the identification card from any officer terminated[~~and remit it to the SLEO program administrator for destruction~~].

Section 12. Violations. (1) All governmental units utilizing SLEO's shall be subject to inspection and investigation by the Cabinet as circumstances may warrant for possible violations.

(2) Violations may result in prosecution and recommendation to the Secretary of Justice that the commission be revoked.

Section 13. Revocation or Suspension of SLEO Commissions. (1) A SLEO may have his or her commission suspended or revoked in accordance with KRS 61.910.

(2) The program administrator shall notify the secretary of any violations of KRS 61.910, who shall send written notice of the alleged violation to the:

(a) SLEO; and

(b) Governmental unit employing the SLEO.

(3) The notice of alleged violation shall be sent to the SLEO and employing governmental unit by certified mail, return receipt requested.

(4) The SLEO may request an administrative hearing before the secretary before suspension or revocation is imposed. The request for hearing shall be in writing and shall be received by the Secretary within thirty (30) days of receipt by the SLEO of the notice of intent to seek suspension or revocation.

(5) The secretary shall suspend or revoke the commission of a SLEO who fails to request an administrative hearing within the applicable time period above.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) The cabinet may temporarily suspend the commission of a SLEO prior to holding a hearing pursuant to KRS Chapter 13B if the cabinet believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the cabinet shall hold a Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLEO requests an extension for a time certain. If the SLEO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(8)[~~(7)~~] Upon revocation of a SLEO commission:

(a) The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO officer;

(b) The governmental unit responsible for the SLEO officer shall forward a letter to the officer stating that:

1. His or her commission has been revoked or suspended; and

2. He or she shall immediately return the SLEO identification card to the governmental unit;

(c) Upon receipt of the card, the governmental unit shall destroy it[~~forward it to the SLEO program administrator~~]; and

(d) The program administrator shall notify the county clerk in the officer's county of jurisdiction whenever a SLEO officer's commission has been suspended or revoked.

Section 14. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers.

(1) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental units whose public property is being protected by the SLEO officer involved. The governmental unit shall notify the cabinet of all incidents involving their SLEO personnel as required by Section 11(3) of this administrative regulation.

(2) However, the cabinet program administrator or other assigned officers may investigate any and all complaints or unusual incidents involving SLEO officers, if there is reason to believe the provisions of KRS 61.900-61.930, 61.990, 61.991, or 500 KAR

Chapter 2, or other applicable laws or administrative regulations have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLEO officer involved.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SLEO Application Candidate Information Form", SLEO-1, July 1, 2010[~~March 3, 2009~~] edition;

(b) "Authority to Release Information Form", SLEO-2, April 13, 2009 edition;

(c) "Letter of Intent Form", SLEO-3, June 3, 2009 edition; [~~and~~]

(d) "SLEO Acknowledgement Notice Form", SLEO-4, August 10, 2009[~~January 12, 2009~~] edition;

(e) "SLEO Renewal Application" form (SLEO-5), July 1, 2010 edition; and

(f) "County Clerk Oath" form (SLEO-6), July 1, 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 9 a.m. in the First Floor Conference Room, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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, 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 filing requirements for those applying for a commission as a Special Law Enforcement Officer and the process by which the cabinet will review applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 61.900 to 61.930 and to establish the application requirements for those commissioned as a Special Law Enforcement Officer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.902 authorizes the Secretary of the Justice and Public Safety Cabinet to commission as Special Law Enforcement Officers those who meet the requirements of KRS 61.900 to 61.930. KRS 61.904 requires the secretary to promulgate administrative regulations to accomplish this purpose. This administrative regulation establishes the application and investigation procedure to ensure that applicants meet all statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets clear and reasonable application requirements for all who wish to be commissioned as a Special Law Enforcement Officer.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes minor changes in some of the requirements for applying for a commission as a SLEO such as first aid and CPR requirements, dates for re-submitting deficient applications, rejection of falsified applications, and destruction of identification cards of terminated SLEOs. The amendment also creates two new forms, including a form for a renewal application.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to improve operation of the SLEO commissioning program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 61.900 to 61.930 and KRS Chapter 13A, by clearly establishing the procedure for commission as a Special Law Enforcement Officer.

(d) How the amendment will assist in the effective administration of the statutes: It will provide an updated and easy to understand procedure for application and re-application for all Special Law Enforcement Officer applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 165 people currently commissioned in the program representing a number of governmental agencies, including local boards of education, the Kentucky State Police, the Administrative Office of the Courts, and the Department of Military Affairs. The governmental agencies affected would be all those currently in the program plus any new ones which qualify.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Investigations reviews the applications for commissions and conducts the background investigations. The entities listed in question 3 will submit applications and renewals for commissioning of their SLEOs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for the Special Law Enforcement Officer Program are established in KRS 61.908, with an application and renewal fee of $25. The cost of training provided by the Department of Criminal Justice Training is $1,200 for the required eighty (80) hours of training, including $150 for housing if the applicant stays in the DOCJT dormitory.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals commissioned as SLEOs will have the authority of peace officers on the public property which they protect.

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

(a) Initially: This administrative regulation has been in effect since 1986.

(b) On a continuing basis: This cost should remain the same.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The current application fee is $25, which does not cover the full cost of performing the background investigation. The remaining costs are paid for through Justice and Public Safety Cabinet funding via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Currently, KRS 61.908 establishes the amounts that may be charged in connection with an application for SLEO commission. As a result, that amount cannot be changed in this administrative regulation. However, those amounts, enacted in 1977, do not cover the true costs of administering the program and the Cabinet would welcome an increase in the application and renewal fees to also cover the cost of the background investigation. Each new application requires approximately 15 hours of work. Each renewal application requires

approximately 12 hours.

(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 positively affect a number of governmental agencies that employ SLEOs, including local boards of education, the Kentucky State Police, and the Administrative Office of the Courts. All state, county, city, metropolitan, or combined governments are eligible to seek commissions for SLEOs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.904 requires the Secretary of the Justice and Public Safety Cabinet to administer the SLEO commissioning process.

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 the Office of Investigations is for payment of salaries for personnel to perform the required background investigations. It should have no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? It is difficult to provide an exact dollar figure, but it is estimated at least 15 hours are spent working on each new application. This includes the investigator, the office assistant, Kentucky State Police inquiry, and legal review time, in addition to office supplies. The cost for a renewal application will be slightly lower, approximately 12 hours per application. Regardless, both will exceed the $25 fee.

(d) How much will it cost to administer this program for subsequent years? The commissions are for a two year period. After the initial application, the amount of time and costs should decrease for approximately 12 hours per applicant.

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

Revenues (+/-): None

Expenditures (+/-): Please refer to question #4 above.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Office of the Secretary
(Amendment)

500 KAR 3:020. Filing and processing SLPO commissions.

RELATES TO: KRS 61.360
STATUTORY AUTHORITY: KRS 15A.160
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or his agent to appoint Special Local Peace Officers. This administrative regulation establishes the procedure for applying for a commission as a Special Local Peace Officer.

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a SLPO, an applicant shall present satisfactory evidence of compliance with the conditions and requirements set forth in KRS 61.360.

Section 2. Application for Commission as a Special Local Peace Officer. Applications from the property owner shall be sent to the cabinet SLPO program administrator and shall comply with the following requirements:

(1) An applicant shall meet all of the requirements of KRS 61.360 before a commission shall be granted. An applicant who qualifies may hold additional commissions for different property locations.

(2) The applicant shall complete two (2) notarized "SLPO Application Candidate Information (SLPO-1)" forms, which shall include the following:

(a) The name of the property owner;

(b) The name, address, date of birth, and Social Security number of the applicant and a detailed personal description;

(c) A certified copy of the applicant's birth certificate;

(d) Two (2) photographs of the applicant, which shall be:

1. Full face;

2. At least three (3) inches by five (5) inches in size; and

3. Taken within thirty (30) days prior to submission of the application;

(e) A copy of the applicant's military discharge or Form DD-214, if the applicant is a veteran;

(f) The signature of the property owner;

(g) A statement of all arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies; and

(h) The notarized signature of the applicant.

(3) The ten (10) dollar application fee shall be:

(a) Submitted with the application form;

(b) Nonrefundable; and

(c) Submitted by check or money order made payable to the Kentucky State Treasurer.

(4) Submission of any false or misleading information or the withholding of information requested on the application or by the cabinet investigator, may[~~shall~~] be grounds for rejection without further consideration.

(5) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(6) The application shall also contain the Authority to Release Information Form (SLPO-4) to allow the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a cabinet official.

(7) The applicant shall also sign the SLPO Acknowledgment Notice Form (SLPO-5) which indicates that:

(a) He has received, read, and understands:

1. KRS 61.300;

2. KRS 61.360;

3. KRS 61.991;

4. KRS 62.010;

5. KRS 62.990; and

6. The administrative regulations in 500 KAR Chapter 3;

(b) He acknowledges that his authority is limited and restricted under the SLPO Act, cited in paragraph (a) of this subsection; and

(c) He understands and acknowledges that his commission as a SLPO does not give him the right or authority to carry a concealed weapon off the premises of the said property, unless he holds a license to carry a concealed deadly weapon issued pur-

suant to KRS 237.110.

(8) A Letter of Intent Form (SLPO-3) shall be filed with each application by the property owner giving the name of applicant and the specific private property to be protected. This letter shall accompany the application forms for SLPO initial application or renewals.

(9) The applicant shall arrange for an interview with the SLPO program administrator.

(10) If the application is defective or in conflict with the SLPO Act, cited in subsection (7)(a) of this section or 500 KAR Chapter3, the application shall be returned to the property owner. An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator[original submission date].

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special local peace officer shall be validated and granted as follows:

(1) If the applicant has successfully satisfied the requirements of the statutes cited in Section 2(7)(a) of this administrative regulation, a commission certificate and a Special Local Peace Officer Recommendation of Background Investigator (SLPO-2) form shall be forwarded by the SLPO program administrator to the secretary for review. After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file.

(2) If a commission is granted:

(a) The commission, one (1) application, and two (2) County Clerk Oath forms (SLPO-6)[and the applications] shall be forwarded by the cabinet to the property owner.

(b) The appointed applicant shall promptly take the application and the two (2) County Clerk Oath forms[both applications] to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment.

(c) The county clerk shall then complete and sign the clerk's attestation on both County Clerk Oath forms[the applications] and retain one (1) copy for filing purposes in the county clerk's office in accordance with the statute.

(d) The applicant shall return the second County Clerk Oath form[application] signed by the clerk to the property owner.

(e) The property owner shall then return the second County Clerk Oath form[copy of the application] to the cabinet SLPO program administrator for the purpose of indicating that the oath was administered and that it is filed with the county clerk.

(f) The property owner shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the second County Clerk Oath form is[application] to the cabinet SLPO program administrator. If the County Clerk Oath form[oath and application are] not returned within thirty (30) days, the commission shall be revoked in accordance with KRS 62.010 and 62.990.

(g) The commission certificate shall be kept by the property owner so long as the officer is employed or until his authority is terminated by action of the property owner or the cabinet secretary.

(3) A SLPO Commission shall be issued for a period of two (2)[four (4)] years, if the officer continues to meet all statutory and regulatory criteria.

(4) After the SLPO officer has taken the constitutional oath of office, the property owner shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or cabinet official and is subject to control by the cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner or the cabinet, he shall immediately return this identification card to the officer's property owner[who shall return the same to the SLPO program administrator].

(5) A notice shall be forwarded to the property owner concerning any officer whose appointment has been suspended or revoked by the secretary. The property owner shall maintain current files and make renewal applications at least sixty (60) days prior to the commission's expiration date.

(6) The applicant shall not exercise the authority of a SLPO until the property owner has received the commission certificate from the cabinet.

(7) The SLPO commission certificate shall be held by the property owner and shall be available for inspection by the cabinet program administrator or his designee. The commission certificate remains the property of the cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Denial of an Application. (1) If an application for commission as a SLPO is denied, the applicant and property owner may appeal the determination in accordance with KRS Chapter 13B. An appeal shall be filed:

(a) In writing with the secretary; and

(b) Within thirty (30) days of the date of the written notice that the application has been denied.

(2) An applicant who is denied a commission shall not submit another SLPO application for a period of at least one (1) year.

Section 5. Renewals. A Letter of Intent Form (SLPO-3) from the property owner stating a request to renew a commission and two (2) complete signed and notarized SLPO Renewal Application Forms (SLPO-7)[a new set of applications] for each applicant involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his records up-to-date.

Section 6.[5.] Records, Reports and Responsibility. Each property owner employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:

(1) The property owner shall keep the individual officer's commission certificates on file, to be returned to the Cabinet upon termination of the officer and/or his authority.

(2) The property owner shall post a copy of 500 KAR Chapter 3 and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. However, the property owner shall notify the cabinet SLPO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the property owner. If formal charges are pending, the property owner shall advise the SLPO program administrator as to all specific charges, trial dates, and the final disposition of all charges.

(4) The property owner shall mail or e-mail to the SLPO program administrator by June 30 of each year:

(a) A current list of all active SLPO personnel; and

(b) The number of arrests made or citations issued by the SLPO the previous calendar year[to the SLPO program administrator by June 30 each year].

(5) The property owner shall issue each SLPO officer an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size 2 1/4 in. x 3 1/2 in.; and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Local Peace Officer (SLPO), pursuant to KRS 61.360. As a SLPO, the holder of this card is deemed to be a peach officer within the meaning of KRS 527.020 and may exercise the limited powers of a peace officer granted by KRS 61.360"; and

2. The other side containing a full-faced photograph of the officer with his or her:

a. Name;

b. Identification or notation that the officer has been commissioned a "Special Local Peace Officer";

c. Property owner employing the officer;

d. Badge number, if any; and

e. Signature of the officer's property owner[~~, encased in plastic, upon the applicant's appointment. The identification card shall be billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches) and shall include:~~

~~(a) A reduced copy of the officer's commission certificate (reduced by photographing or other method) on one side of the card;~~

~~(b) A full-faced photograph of the officer on the other side of the card; and~~

~~(c) The name, date of birth, Social Security number, and signature of the officer~~].

(6) The property owner shall be responsible for obtaining and destroying the identification card from any officer terminated[~~and remitting the same to the SLPO program administrator for destruction~~].

(7) If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the Cabinet of this fact and the reason for cancellation or revocation. This notice shall be sent in writing to the Cabinet within five (5) days of cancellation or revocation. This notification provision shall be retroactive in application and shall be applicable to SLPOs who have already been commissioned.

Section 7.[~~6.~~] Violations. A property owner utilizing SLPO's shall be subject to inspection and investigation by the cabinet for possible violations. Violations may result in prosecution and recommendation to the secretary that the commission affected directly or indirectly be revoked.

Section 8.[~~7.~~] Revocation or Suspension of SLPO Commissions. (1) If it is determined by the program administrator that KRS 61.360 of the SLPO Act applies to any active SLPO commissioned officer, the program administrator shall notify the secretary who shall revoke or suspend the commission of any special local peace officer, after an administrative hearing conducted in accordance with KRS Chapter 13B, if he determines:

(a) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission;

(b) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the cabinet; or

(c) That the commission-holder has violated any of the Kentucky Revised Statues or administrative regulations cited in Section 2(7)(a) of this administrative regulation, or order of the secretary.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner involved to return the commission of the SLPO officer involved to the SLPO program administrator for the cabinet. The property owner responsible for the SLPO officer shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO identification card to the property owner[~~who shall forward the card to the SLPO program administrator~~].

(3) The secretary may temporarily suspend the commission of an SLPO prior to holding a hearing pursuant to KRS Chapter 13B if he believes that the safety of the public requires such an action. In the event that a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the secretary shall hold a KRS Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLPO requests an extension for a time certain. If the SLPO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(4) The program administrator shall notify the county clerk in the officer's county of jurisdiction if a SLPO officer's commission has been surrendered, suspended, or revoked.

Section 9.[~~8.~~] Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers.

(1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. The property owner shall be responsible for notification to the cabinet of all incidents involving their SLPO personnel as indicated in Section 5 of this administrative regulation.

(2) The cabinet program administrator or other assigned officers may investigate any complaints or unusual incidents involving a SLPO officer if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLPO officer involved.

Section 10.[~~9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SLPO Application Candidate Information Form (SLPO-1)", July 1, 2010[~~August 14, 2008~~] edition;

(b) "Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)", May 8, 2008 edition;

(c) "Letter of Intent Form (SLPO-3)", July 28, 2008 edition;

(d) "Authority to Release Information Form (SLPO-4)", July 28, 2008 edition; [~~and~~]

(e) "SLPO Acknowledgment Notice Form (SLPO-5)", April 29, 2009[~~July 28, 2008~~] edition;

(f) "County Clerk Oath" Form (SLPO-6), July 1, 2010 edition; and

(g) "SLPO Renewal Application Form (SLPO-7)" July 1, 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 9 a.m. in the First Floor Conference Room, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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, 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 filing requirements for those applying for a commission as a Special Local Peace Officer and the process by which the cabinet will review applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 61.360 and to establish the application requirements for those commissioned as a Special Local Peace Officer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.360 establishes the office of Special Local Peace Officer and imposes certain requirements on those seeking a commission. This administrative regulation establishes the application and investigation procedure to ensure that applicants meet the requirements of KRS 61.360(1).

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation sets clear and reasonable application requirements for all who wish to be commissioned as a Special Local Peace Officer.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes minor changes in some of the requirements for applying for a commission as a SLPO such as correction of deficient applications, changes to the forms for becoming a SLPO, appellate provisions in the event of a denial of an application, arrest information to be submitted to the program coordinator, provisions for temporary suspension of a commission, and various drafting and formatting changes.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to improve operation of the SLPO commissioning program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 61.360 and Chapter 13A, by clearly establishing the procedure for commission as a Special Local Peace Officer.

(d) How the amendment will assist in the effective administration of the statutes: It will provide an updated and easy to understand procedure for all Special Local Peace Officer applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 39 people commissioned in the program representing about 15 property owners. These numbers will vary from month to month. The agencies affected are the Justice and Public Safety Cabinet, Office of Investigations; Kentucky State Police; Vital Statistics; Transportation Cabinet; and the Administrative Offices of the Courts. The businesses affected would be all those currently in the program plus any new ones which qualify.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Investigations has been designated by the Governor to review the applications for commissions and conduct the background investigations. The Kentucky State Police, Vital Statistics, Transportation Cabinet, and Administrative Office of the Courts will be contacted to review their records relating to the driving and criminal history of the applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In accordance with KRS 61.360, the cost to applicants is $10. The cost of compliance for the state agencies listed above is difficult to determine, as they are accessing records that they maintain and routinely access.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals commissioned as SLPOs will have the authority of peace officers on the private property which they protect. The state agencies listed will receive no benefit.

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

(a) Initially: This administrative regulation has been in effect since 1986.

(b) On a continuing basis: This cost should remain the same.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The current application fee is $10, which does not cover the full cost of performing the background investigation. The remaining costs are paid for through Justice and Public Safety Cabinet funding via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Currently, KRS 61.360 establishes the amount ($10) that may be charged in connection with an application for SLPO commission. As a result, that amount cannot be changed in this administrative regulation. However, that amount does not cover the true costs of administering the program and the cabinet would welcome an increase in the application fee to also cover the cost of the background investigation. Each new application requires approximately 15 hours of work. Each renewal application requires approximately 12 hours.

(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 state government agencies, Kentucky State Police, Vital Statistics, Transportation Cabinet, and Administrative Office of the Courts, whose services will be necessary to continue the commissioning of SLPOs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.360 provides that no person shall be eligible for appointment as a SLPO unless he has established that he meets the qualifications to the satisfaction of the Governor.

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 the Office of Investigations is for payment of salaries for personnel to perform the required background investigations. It should have no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? It is difficult to provide an exact dollar figure, but it is estimated at least 15 hours are spent working on each new application. This includes the investigator, the office assistant, Kentucky State Police inquiry, and legal review time, in addition to office supplies. The cost for a renewal application will be slightly lower, approximately 12 hours per application. On key point, one hour of anyone connected to the programs time will surpass the $10 fee.

(d) How much will it cost to administer this program for subsequent years? The commissions are for a two year period. After the initial application, the amount of time and costs should decrease for approximately 12 hours per applicant.

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

Revenues (+/-): None

Expenditures (+/-): Please refer to question #4 above.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Forensic Laboratory
(Amendment)

502 KAR 32:010. Centralized database for DNA identification records.

RELATES TO: KRS 17.170, 17.175, 10 U.S.C. 1565, 42 U.S.C. 14132, 42 U.S.C. 14131

STATUTORY AUTHORITY: KRS 15A.160, 17.170(5), 17.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary to promulgate administrative regulations and direct proceedings and actions for the administration of allows and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 17.170(5) authorizes the Justice and Public Safety cabinet to promulgate administrative regulations concerning the sampling and packaging of DNA. KRS 17.175(6) requires the cabinet to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Authorized personnel" is defined by KRS 17.169(2).

(2) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone.

(3) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(4)[~~(3)~~] "DJJ" means the Department of Juvenile Justice.

(5) "DNA" means deoxyribonucleic acid.

(6) "DNA database" means the database that is part of the federal Combined DNA Index System maintained by the Kentucky State Police under agreement with the Federal Bureau of Investigation and contains the DNA profiles for qualifying offenders, crime scene specimens, unidentified human remains, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(7) "DNA Database Supervisor" means a person designated as the point of contact with the Federal Bureau of Investigation to insure the proper operation and security of the database.

(8) "DNA profile" is defined by KRS 17.169(1).

(9) "DNA sample" means a biological sample collected for DNA identification purposes.

(10) "DOC" means the Department of Corrections.

(11) "Evidentiary item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(12) "KSP" means the Kentucky State Police.

(13) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(14) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a DNA sample from a qualifying offender by finger prick lancet or other biological sample for the purpose of obtaining a DNA profile.

(15) "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170 - 17.174.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) In accordance with KRS 17.170(2), DNA samples shall be collected by DOC and DJJ.

(2) In accordance with KRS 17.170(5), KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit shall contain the collection materials necessary to obtain either a blood sample by a finger stick lancet procedure or other biological sample. Each offender DNA collection kit shall be secured in protective wrapping materials in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A and for the "Offender DNA Collection Kit Information Sheet (buccal swab method)", KSP Form No. 47-B). The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample or other biological samples on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed accurately with as much biographical and offense-related information available concerning the qualifying offender. The qualifying offender's left and right thumbprints shall be taken when the sample is collected, except in the instance of amputation or injury to the qualifying offender's thumbs, in which case another digit shall be printed per the instructions on the Offender DNA Collection Kit Information Sheet. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the DNA sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender. The DNA sample shall be taken by DOC or DJJ authorized personnel and shall not be self-collected by the qualifying offender.

(4) Following collection of a blood or other biological sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request For Examination," KSP Form No. 26.

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a DNA sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion In DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample shall be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection of DNA Samples from Crime Scenes for Inclusion in DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be

established.

Section 6. Quality Assurance Standards for DNA Database. (1) The proficiency of examiners conducting DNA analysis for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(2).

(2) Only DNA profiles obtained as a result of DNA analysis shall be entered in the DNA database.

Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database shall only be accessed as approved by the DNA Database Supervisor by Kentucky State Police employees who show proficiency in DNA testing and the DNA database, maintain continuing education hours pursuant to KSP forensic lab policy and federal requirements. The DNA Database Supervisor may provide KSP interns with limited access to the DNA database pursuant to KSP forensic lab policy.

(3) All data and information generated by the DNA Database are confidential.

(4) Searches shall be conducted for law enforcement, criminal justice agencies or governmental forensic science laboratories approved by the DNA Database Supervisor pursuant to federal guidelines.

(5) Access to the DNA Database shall be through computers that are utilized solely for accessing the DNA Database by authorized users and are located in areas secured by the Kentucky State Police.

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

(a) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)" KSP Form No. 47-A, January 2006;

(b) "KSP Request For Evidence Examination," KSP Form No. 26, March 2001;

(c) "Offender DNA Collection Training Program for Trainers", KSP Form No. 139, June 2008;

(d) "Offender DNA Collection Training Program for Collectors", KSP Form No. 140, June 2008;

(e) "Offender DNA Collection Training Program", KSP Form No. 141, June 2008; and

(f) "Offender DNA Collection Kit", KSP Form No. 47-B, August 2009[~~May 2008~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 12, 2010

FILED WITH LRC: July 14, 2010 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 2010, at 1 p.m. at the Kentucky State Police Headquarters, 919 Versailles Rd., 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 August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends the Offender DNA Collection Kit.

(b) The necessity of this administrative regulation: The new Offender DNA Collection Kit contains more information regarding the criminal charges, removes unnecessary information regarding subject release, and provides additional information regarding when fingerprints should be submitted with the form.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It simply amends a pre-existing form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It amends the DNA Collection Kit to remove unnecessary information regarding the offender release dates and adds clarifying information to assist all parties in DNA collection and recordkeeping.

(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: Amends the Offender DNA Collection Kit contains more information regarding the criminal charges, removes unnecessary information regarding subject release, and provides additional information regarding when fingerprints should be submitted with the form.

(b) The necessity of the amendment to this administrative regulation: Removes unnecessary information regarding offender release dates and clarifies other information for ease of administration and record-keeping.

(c) How the amendment conforms to the content of the authorizing statutes: The cabinet is authorized by KRS 17.170 and17.175 to implement DNA Collection procedures. This amendment simply amends an existing Collection Kit used by entities collecting DNA.

(d) How the amendment will assist in the effective administration of the statutes: See answer (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky State Police,; Department of Juvenile Justice, Probation and Parole, and Department of Corrections.

(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: Personnel will receive an updated informational sheet explaining the changes on the Collection Kit.

(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 amendment removes unnecessary information and includes information that is useful to all agencies involved in the process of collecting, compiling and analyzing DNA.

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

(a) Initially: No new costs.

(b) On a continuing basis: KSP is charged with providing DNA Collection Kits to entities involved in collecting DNA. This is an ongoing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and Federal Grants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because all felons and sex offenders are treated identically.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police; Department of Juvenile Justice; Probation and Parole; and Department of Corrections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 10 U.S.C. 1565, 42 U.S.C. 14131, 14132

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:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Licensing
(Amendment)

601 KAR 9:015. Registration of motor vehicle dealers and manufacturers.

RELATES TO: KRS 186.070, 190.010, 190.040

STATUTORY AUTHORITY: KRS 174.080, 186.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.070 requires the Transportation Cabinet to promulgate an administrative regulation establishing the license revocation procedures for motor vehicle manufacturers and motor vehicle dealers. This administrative regulation establishes the license revocation procedures and establishes procedures for a county clerk to insure that a motor vehicle dealer or motor vehicle manufacturer is qualified and licensed as required in KRS 186.070[~~This administrative regulation requires the county clerk to place the dealer's license number on the face of the dealer registration certificate. This provides a method of checking to whom dealer's plates have been issued and to assure that the dealer is properly licensed~~].

Section 1. County Clerk Procedures. (1) The county clerk, before issuing a motor vehicle dealer or motor vehicle manufacturer a certificate of registration and a license plate pursuant to[~~as provided by~~] KRS 186.070, shall require each applicant to present a license issued by the Motor Vehicle Commission showing that he or she has qualified as a motor vehicle dealer or motor vehicle manufacturer as provided by KRS 190.010[~~Chapter 190~~].

(2) The clerk shall insert on the face of the dealer registration certificate the license number issued by the Motor Vehicle Commission.

Section 2. Licensing. (1) A motor vehicle[~~Each~~] manufacturer or motor vehicle[~~and~~] dealer shall file Motor Vehicle Dealer or Manufacturer's Dealer Plate Usage Authorization Register, TC Form 96-10B with the county clerk to obtain a manufacturer's or dealer's license plate[~~the verified statement required by KRS 186.070(2)(a) on forms TC 96-10 as revised October, 1989, Kentucky Motor Vehicle Dealer/Manufacturer Dealer Plate Usage Authorization Register and TC 96-153 as revised May, 1991, Affidavit Supporting Application for License Plates for Manufacturers and Dealers. These forms are incorporated by reference as a part of this administrative regulation~~].

(2)(a) A motor vehicle manufacturer or motor vehicle dealership shall authorize an employee to drive a motor vehicle by signing a Kentucky Motor Vehicle Dealer or Manufacturer Temporary Employee Transportation Permit For Dealer Usage, TC Form 96-10A.

(b) A completed and original Kentucky Motor Vehicle Dealer or Manufacturer Temporary Employee Transportation Permit For Dealer Usage, TC Form 96-10A, signed by the designated representative of a motor vehicle dealership or motor vehicle manufacturer shall be placed in a motor vehicle being transported and shall be valid for five (5) days.

Section 3. Revocation Procedures. A motor vehicle dealer or motor vehicle manufacturer whose license has been revoked pursuant to KRS 186.070 shall follow the license revocation procedures established in KRS 190.040.

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

(a) "Kentucky Motor Vehicle Dealer or Manufacturer Temporary Employee Transportation Permit For Dealer Plate Usage", TC Form 96-10A, June, 2010;

(b) "Kentucky Motor Vehicle Dealer or Manufacturer Dealer Plate Usage Authorization Register", TC Form 96-10B, June, 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Transportation Cabinet Building,[~~The forms incorporated by reference in this section may be viewed, copied or obtained at the Transportation Cabinet, Department of Vehicle Regulation,~~] Division of Motor Vehicle Licensing, 200 Mero Street,[~~501 High Street, 2nd Floor, State Office Building,~~] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.[~~. The division's telephone number is (502) 564-5301. Its business hours are 8 a.m. to 4:30 p.m. eastern time, weekdays.~~]

T.O. ZAWACKI, Commissioner
MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: July 11, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. 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 you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation requires a motor vehicle manufacturer or motor vehicle dealer to follow the license revocation procedures in KRS 190.040. It also establishes procedures for a county clerk to follow in order to insure that a motor vehicle dealer or manufacturer is properly qualified and licensed.

(b) The necessity of this administrative regulation: This administrative regulation informs dealers and manufacturers of the procedures to become properly qualified and licensed as required in KRS 186.070. It also informs motor vehicle manufacturers dealers that they must follow the procedures of KRS 190.040 if their license is revoked.

(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation as amended will now include a reference to the license revocation procedures as required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation will add language informing manufacturers and dealers about the license revocation process. The amendments will update language, forms, and the address of the cabinet.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update language, forms, the cabinet's building address, and add new language that will fulfill the statutory requirements of KRS 186.070(3).

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation to update the cabinet's address, forms, and add the revocation language required by the statute.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment adds the revocation procedures language required by KRS 186.070(3).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the updated forms and address as well as the current procedures to revoke a dealer or manufacturer's license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all motor vehicle dealers and manufacturers who apply for a dealer's license plate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each applicant will present a license issued by the Motor Vehicle Commission and a verified statement to the county clerk.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): A motor vehicle dealer and manufacturer will receive a certificate of registration and a license plate from the county clerk's office.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding involved.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish fees.

(9) TIERING: Is tiering applied? No tiering is applied because KRS 186.070(2) requires the same information from both motor vehicle dealers and motor vehicle manufacturers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the county clerks offices.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 174.080, 186.070

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 costs are required or expected.

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected.

(d) How much will it cost to administer this program for subsequent years? No subsequent costs are anticipated.

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:130. Approval of innovative alternative school calendars.

RELATES TO: KRS 157.320, 157.350, 158.060, 158.070, 2010 HB 1, part I, C, 3(17)[~~2008 Ky Acts ch. 127, Part I, D, 4, (14)~~]

STATUTORY AUTHORITY: 2010 HB 1, part I, C, 3(17)[~~2008 Ky Acts ch. 127, Part I, D, 4, (14)~~]

NECESSITY, FUNCTION, AND CONFORMITY: 2010 HB 1, part 1, C, 3(17)[~~2008 Ky Acts ch. 127, Part I, D., 4., (14)(c)~~] requires the Kentucky Board of Education to establish by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars.

Section 1. (1)(a) A local board of education may request approval of an innovative alternative school calendar for the 2010-2011[~~2008-2009~~] school year or the 2011-2012[~~2009-2010~~] school year by submitting a written request to the Commissioner of Education.

(b) All calendars that contain less than 170 six (6) hour instructional days shall be considered innovative alternate calendars and shall be submitted to the Commissioner of Education for approval.

(2) The request shall:

(a) Be signed by the superintendent and board of education chairperson;

(b) Contain a specific explanation of the reason for the request; and

(c) Include the following information:

1. How the alternative calendar will improve teaching and

learning in the district;

2. How 1,062 hours of instruction will be included in the calendar;

3. The structure of any instructional days that are less than six-hours in length; and

4. A description of how the alternative calendar will provide for professional learning situations designed to improve instructional practices that will enhance student learning.

Section 2. (1) A request for approval of an innovative alternative school calendar shall be submitted to the Commissioner of Education no later than June 30 preceding the school year for which the request is submitted.

(2) The commissioner shall approve the request upon a determination that:

(a) The requirements established in Section 1(2) of this administrative regulation have been met; and

(b) The alternative calendar is designed to improve teaching and learning in the district.

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).

TERRY HOLLIDAY, Ph.D., Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 23, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 30, 2010, at 10 a.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 (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, phone 502 564-4474.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes new requirements for innovative alternative school calendars per 2010 HB 1, part I, C, 3(17).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 158.060; 158.070; and 2010 HB 1, part I, C, 3(17) that set forth the requirements for innovative alternative school calendars to be used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for innovative alternative school calendars required in KRS 158.060; 158.070; and 2010 HB 1, part I, C, 3(17).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics regarding how innovative alternative school calendars are to be submitted by local school districts per KRS 158.060; 158.070; and 2010 HB 1, part I, C, 3(17) to the Kentucky Department of Education for commissioner 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: The change will allow school districts and the KDE more flexibility in the selection and approval of innovative alternative school calendars.

(b) The necessity of the amendment to this administrative regulation: Approval of 702 KAR 7:140 should result in clearer guidance to local districts at they apply the new guidance for innovative alternative school calendars set forth in 2010 HB 1, part I, C, 3(17).

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes by providing specific guidance for school districts that clarifies the approval process for innovative alternative school calendars set forth in 2010 HB 1, part I, C, 3(17).

(d) How the amendment will assist in the effective administration of the statutes: The emergency changes to the regulation whereby a local board of education may request approval of an innovative alternative school calendar for the 2010-2011 school year or the 2011-2012 school year.

(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.

(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: Local boards of education are required to adopt a school calendar for the upcoming school year prior to May 15 of each year. 2010 HB 1, part I, C, 3(17) requires the Kentucky Board of Education to establish by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars. All calendars that contain less than 170 six-hour instructional days shall be considered innovative alternate calendars and shall be submitted to the Commissioner of Education for approval no later than June 30 preceding the school year for which the request is submitted.

(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: School districts will abide by the requirements set forth. Kentucky Department of Education staff will continue to process requests submitted by school districts for Commissioner approval.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will submit innovative alternative school calendars that meet statutory requirements.

(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: No additional funding is necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or 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. 2010 HB 1, part I, C, 3(17); KRS 158.060; and 158.070.

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. There will be no additional revenue generated by this administrative regulation.

(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 AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Public Records Division
(Amendment)

725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.420(3), 171.450

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.420(3) provides that the State Archives and Records Commission shall be the final authority for the disposition of all public records in Kentucky. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to promulgate administrative regulations to enforce the provision of KRS 171.410 to 171.740[~~by promulgating administrative regulations~~]. This administrative regulation identifies records retention and disposition schedules approved by the commission that[~~of public records approved and authorized for use by~~] state and local agencies shall follow for retention and disposition of public records.

Section 1. Schedules. (1) A Kentucky state government agency shall comply with:

(a) Records Retention Schedule,[~~The~~] General Schedule for State Agencies;

(b) Records Retention Schedule,[~~The~~] General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Department of Agriculture:

2. Records Retention Schedule, Auditor of Public Accounts;

3. Records Retention Schedule, Economic Development Cabinet;

4. Records Retention Schedule, Education and Workforce Development Cabinet;

5. Records Retention Schedule, Energy and the Environment Cabinet;

6. Records Retention Schedule, Finance and Administration Cabinet;

7. Records Retention Schedule, General Government;

8. Records Retention Schedule, Office of the Governor;

9. Records Retention Schedule, Cabinet for Health and Family Services;

10. Records Retention Schedule, Justice and Public Safety Cabinet;

11. Records Retention Schedule, Department of Law;

12. Records Retention Schedule, Labor Cabinet;

13. Records Retention Schedule, Legislative Branch;

14. Records Retention Schedule, Office of the Lieutenant Governor;

15. Records Retention Schedule, Personnel Cabinet;

16. Records Retention Schedule, Public Protection Cabinet;

17. Records Retention Schedule, Office of the Secretary of State;

18. Records Retention Schedule, Tourism, Arts and Heritage Cabinet;

19. Records Retention Schedule, Transportation Cabinet; or

20. Records Retention Schedule, Department of the Treasury.[~~Department of Agriculture Schedule:~~

~~2. Auditor of Public Accounts Schedule;~~

~~3. Commerce Cabinet Schedule;~~

~~4. Economic Development Schedule;~~

~~5. Education Cabinet Schedule;~~

~~6. Environmental and Public Protection Cabinet Schedule;~~

~~7. Finance and Administration Cabinet Schedule;~~

~~8. General Government Schedule;~~

~~9. Office of the Governor Schedule;~~

~~10. Cabinet for Health and Family Services Schedule;~~

~~11. Justice and Public Safety Cabinet Schedule;~~

~~12. Department of Law Schedule;~~

~~13. Legislative Branch Schedule;~~

~~14. Office of the Lieutenant Governor Schedule;~~

~~15. Personnel Cabinet Schedule;~~

~~16. Office of the Secretary of State Schedule;~~

~~17. Transportation Cabinet Schedule; or~~

~~18. Department of the Treasury Schedule.~~]

(2) State universities and the Kentucky Community and Technical College System shall comply with the Records Retention Schedule, State University Model [~~Schedule~~].

(3) Kentucky local government agencies shall comply with:

(a) Records Retention Schedule,[~~The~~] Local Government General Records Schedule;

(b) Records Retention Schedule,[~~The~~] General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Area Development District [~~Schedule~~];

2. Records Retention Schedule, County Attorney [~~Schedule~~];

3. Records Retention Schedule, County Clerk [~~Schedule~~];

4. Records Retention Schedule, County Coroner [~~Schedule~~];

5. Records Retention Schedule, County Judge Executive [~~Schedule~~];

6. Records Retention Schedule, County Sheriff [~~Schedule~~];

7. Records Retention Schedule, County Treasurer [~~Schedule~~];

8. Records Retention Schedule, Jailer [~~Schedule~~];

9. Records Retention Schedule, Lexington Fayette Urban County Government [~~Schedule~~];

10. Records Retention Schedule, Public Library and Library Board[~~Library District Schedule~~];

11. Records Retention Schedule, Local Health Department [~~Schedule~~];

12. Records Retention Schedule, Louisville Metro Government;

13. Records Retention Schedule, Municipal Government [~~Schedule~~]; or

14. Records Retention Schedule,[~~13.~~] Public School District (K-12/Central Office) [~~Schedule~~].

Section 2. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a) "Records Retention Schedule, General Schedule for State Agencies", 2010;

(b) "Records Retention Schedule, General Schedule for Electronic and Related Records", 2010;

(c) "Records Retention Schedule, Department of Agriculture", 2010;

(d) "Records Retention Schedule, Auditor of Public Accounts", 2010;

(e) "Records Retention Schedule, Commerce Cabinet", 2010;

(f) "Records Retention Schedule, Economic Development Cabinet", 2010;

(g) "Records Retention Schedule, Education and Workforce Development Cabinet", 2010;

(h) "Records Retention Schedule, Energy and Environment Cabinet", September 2010;

(i) "Records Retention Schedule, Finance and Administration Cabinet", 2010;

(j) "Records Retention Schedule, General Government", September 2010;

(k) "Records Retention Schedule, Office of the Governor", 2010;

(l) "Records Retention Schedule, Cabinet for Health and Family Services", September 2010;

(m) "Records Retention Schedule, Justice and Public Safety Cabinet", 2010;

(n) "Records Retention Schedule, Labor Cabinet", 2010;

(o) "Records Retention Schedule, Department of Law", 2010;

(p) "Records Retention Schedule, Legislative Branch", 2010;

(q) "Records Retention Schedule, Office of the Lieutenant Governor", 2010;

(r) "Records Retention Schedule, Personnel Cabinet", 2010;

(s) "Records Retention Schedule, Public Protection Cabinet", 2010;

(t) "Records Retention Schedule, Office of the Secretary of State", 2010;

(u) "Records Retention Schedule, Transportation Cabinet", 2010;

(v) "Records Retention Schedule, Tourism, Arts and Heritage Cabinet", 2010;

(w) "Records Retention Schedule, Department of the Treasury", 2010;

(x) "Records Retention Schedule, State University Model", September 2010;

(y) "Records Retention Schedule, Local Government General Records", 2010;

(z) "Records Retention Schedule, Area Development District", 2010;

(aa) "Records Retention Schedule, County Attorney", 2010;

(bb) "Records Retention Schedule, County Clerk", 2010;

(cc) "Records Retention Schedule, County Coroner", 2010;

(dd) "Records Retention Schedule, County Jailer", 2010;

(ee) "Records Retention Schedule, County Judge Executive", 2010;

(ff) "Records Retention Schedule, County Sheriff", 2010;

(gg) "Records Retention Schedule, County Treasurer", 2010;

(hh) "Records Retention Schedule, Lexington Fayette Urban County Government", 2010;

(ii) "Records Retention Schedule, Public Library and Library Board", 2010;

(jj) "Records Retention Schedule, Local Health Department", 2010;

(kk) "Records Retention Schedule, Louisville Metro Government", 2010;

(ll) "Records Retention Schedule, Municipal Government", 2010; and

(mm) "Records Retention Schedule, Public School District (K-12/Central Office)", 2010.[~~"General Schedule for State Agencies", September 2007;~~

~~(b) "General Schedule for Electronic and Related Records Schedule", 2007;~~

~~(c) "Department of Agriculture Schedule", 2007;~~

~~(d) "Auditor of Public Accounts Schedule", 2007;~~

~~(e) "Commerce Cabinet Schedule", 2007;~~

~~(f) "Economic Development Cabinet Schedule", 2007;~~

~~(g) "Education Cabinet Schedule", 2007;~~

~~(h) "Environmental and Public Protection Cabinet Schedule", September 2007;~~

~~(i) "Finance and Administration Cabinet Schedule", 2007;~~

~~(j) "General Government Schedule", September 2007;~~

~~(k) "Office of the Governor Schedule", 2007;~~

~~(l) "Cabinet for Health and Family Services Schedule", September 2007;~~

~~(m) "Justice and Public Safety Cabinet Schedule", 2007;~~

~~(n) "Department of Law Schedule", 2007;~~

~~(o) "Legislative Branch Schedule", 2007;~~

~~(p) "Office of the Lieutenant Governor Schedule", 2007;~~

~~(q) "Personnel Cabinet Schedule", 2007;~~

~~(r) "Office of the Secretary of State Schedule", 2007;~~

~~(s) "Transportation Cabinet Schedule", 2007;~~

~~(t) "Department of the Treasury Schedule", 2007;~~

~~(u) "State University Model Schedule", September 2007;~~

~~(v) "Local Government General Records", 2007;~~

~~(w) "Area Development District Schedule", 2007;~~

~~(x) "County Attorney Schedule", 2007;~~

~~(y) "County Clerk Schedule", 2007;~~

~~(z) "County Coroner Schedule", 2007;~~

~~(aa) "County Judge Executive Schedule", 2007;~~

~~(bb) "County Sheriff Schedule", 2007;~~

~~(cc) "County Treasurer Schedule", 2007;~~

~~(dd) "Jailer Schedule", 2007;~~

~~(ee) "Lexington Fayette Urban County Government Schedule", 2007;~~

~~(ff) "Library District Schedule", 2007;~~

~~(gg) "Local Health Department Schedule", 2007;~~

~~(hh) "Municipal Government Schedule", 2007; and~~

~~(ii) "Public School District (K-12/Central Office) Schedule", 2007.~~]

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONSKT, Commissioner

APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 15, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010 at 1 p.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 17, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Wayne Onkst, Commissioner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies records retention schedules approved for use by public agencies.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the department to establish procedures for

the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation identifies those schedules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the permanent retention, disposal or destruction of public records by identifying schedules public agency personnel shall use in meeting their responsibilities related to public records management. The retention and dispositions mandated by the State Archives and Records Commission are documented on approved records retention schedules.

(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 updates schedule dates, agency names, and retention decisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that schedules be created for public agency records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to dispose of records according to decisions of the State Archives and Records Commission, outlined in the records retention schedules.

(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: There will be no new responsibilities added to those already existing for public agencies under 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 new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation merely identifies schedules utilized in activities agencies are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to use the documents enumerated in this regulation in order to be compliant with the public records law.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

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 net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government, and in more efficient operation of government.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues generated because of this regulation.

(c) How much will it cost to administer this program for the first year? There will be no additional costs generated because of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated because of this regulation.

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

Revenues (+/-): $0.00

Expenditures (+/-): 0.00

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.42, 361.45, 361.46

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the[~~,~~] Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency[~~Office of Vocational Rehabilitation~~]. This administrative regulation prescribes the requirements for the provision of[~~when, and under what conditions,~~] rehabilitation technology services [~~shall be provided,~~] in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certi-

fication to provide services from the Association for Driver Rehabilitation Specialists.

(2) "Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.

(3) "Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

(4) "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

(5)[~~"Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.~~

~~(2)~~] "Eligible individual" means an individual who has been determined by the office[~~an appropriate office staff member~~] to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(6) "Extended driver evaluation" means additional evaluation necessary in those cases where an individual's ability to drive cannot be determined after a driver evaluation.

(7) "Family" means spouse, children, parents, grandparents, or siblings.

(8) "Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.

(9)[~~(3)~~] "Office" means the Office of Vocational Rehabilitation and its [~~appropriate~~] staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(10) "Rehabilitation technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.

(11) "Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.

Section 2. Driver Rehabilitation Technology Services. (1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

(b) Other modes of transportation that would enable the eligible individual to effectively meet the vocational goal as stated in the individualized plan of employment, such as public transportation, are not available;

(c) The individual meets the economic need qualifications established in 781 KAR 1:030; and

(d) The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) If vehicle modification is required, the applicant or eligible individual meets the criteria for vehicle modification, as established in Section 3 of this administrative regulation; and

(c) The applicant or eligible individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist.

(3) Driver rehabilitation technology services may be provided to an applicant or eligible individual who does not meet the requirements of subsection (2) of this section if the Director of Program Services or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 3. Vehicle Modification Services. (1) Modification of a private vehicle shall be authorized if the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and

(b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles when available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

(a) The vehicle can be modified to meet the individual's needs; and

(b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) An eligible individual must obtain a valid Kentucky operator's license before a vehicle modification to allow the individual to drive the vehicle will be approved.

(6) A vehicle modification costing in excess of $5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of $10,000 shall not be provided unless the eligible individual:

(a) Has a vocational objective of competitive employment;

(b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and

(c) The Director of Program Services or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of $10,000 shall not be provided on a used vehicle unless:

(a) The vehicle is no more than two (2) years old:

(b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as specified in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

Section 4. Upgrade and Repair of Vehicle Modifications. (1) An upgrade to a vehicle modification shall not be provided unless:

(a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis; and

(b) The eligible individual is employed;

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by a rehabilitation technology specialist and found:

(a) To be appropriate for the proposed modification; and

(b) To meet all manufacture requirements for the proposed driving system.

(3) A repair to a vehicle modification shall be provided if:

(a) The eligible individual is currently competitively employed, as defined in 34 C.F.R. 361.5(b)(11);

(b) The repair is not required as a result of the eligible individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications;

(d) A rehabilitation technology specialist:

1. Inspects the maintenance records of the vehicle and vehicle modifications;

2. Determines that the maintenance has met manufacturer requirements;

3. Inspects the vehicle and modifications; and

4. Determines that is reasonable to repair the modification.

(4) An upgrade or repair to a vehicle modification costing in excess of $10,000 shall not be provided unless the Director of Program Services or his or her designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive employment or would result in a significant cost savings to the office.

(5) An upgrade or repair may be provided to an eligible individual who does not meet the requirements of this section if the Director of Program Services or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 5. Repeat Vehicle Modifications. (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.

(2) The office shall provide a repeat vehicle modification if:

(a) The eligible individual is currently competitively employed, as defined in 34 C.F.R. 361.5(b)(11);

(b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;

(c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;

(d) A rehabilitation technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;

(e) The eligible individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;

(f) The eligible individual completes a driver evaluation by a rehabilitation technology specialist and obtains a vehicle modification prescription from the specialist; and

(g) The Director of Program Services or designee determines that failure to provide the repeat modification will prevent successful maintenance of competitive employment or would result in a significant cost savings for the office.

Section 6. Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:

(a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;

(b) The eligible individual meets economic needs qualifications established in 781 KAR 1:030;

(c) The eligible individual is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months;

(d) A property modification assessment is completed by a rehabilitation technology specialist;

(e) The eligible individual or family member owns the property to be modified and is current on any mortgage payments;

(f) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past; and

(g) The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.

(2) Property modifications in excess of $30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications, if possible;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

(e) Provide access to entrance to and exit from one (1) bedroom area; and

(f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, and that such a finding could not have been anticipated at the time of purchase.

(5) Property modifications shall not include structural additions to existing properties or the purchase of new property.

(6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(7)(a) All changes or additions to the recommendations of the rehabilitation technology specialist must be approved, in writing by the rehabilitation technology specialist.

(b) and the cost of all changes or additions shall be assumed by the eligible individual.

(8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(9) The eligible individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.

(10) Property modifications shall be provided to an eligible individual that does not meet all the requirements of this section if the Director of Program Services or his or her designee determines, supported by adequate documentation, that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office.[~~Section 2. Vehicle Modification. (1) Modification of a van for an eligible individual determined by an office specialist to be unable to transfer independently into and out of an automobile shall not be authorized over the maximum cost of the automobile modification.~~

~~(2) A vehicle modification costing in excess of $5,000 shall not be provided unless the eligible individual:~~

~~(a) Completes a driver evaluation and vehicle modification assessment by an office specialist;~~

~~(b) Obtains a recommendation from an office specialist;~~

~~(c) Has a vocational objective of competitive employment; and~~

~~(d) Is within two (2) years of job placement.~~

~~(3) Vehicle modifications shall be provided to an individual who is not within two (2) years of job placement if the Director of Program Services determines that documentation exists that the modification results in a substantial cost savings to the office.~~

~~(4) The office shall not provide vehicle modifications in excess of $5,000 for vehicles older than two (2) years or with more than 25,000 miles unless the overall condition of the vehicle justifies the modifications as attested by an office specialist..~~

~~Section 3. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair shall be provided for an eligible individual if needed for obtaining or maintaining employment.~~

~~(2) Upgrade or repair of vehicle modifications in excess of $10,000 shall be provided if the Director of Program Services determines that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes the successful achievement of the employment goal.~~

~~Section 4. Second Time Modifications. (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.~~

~~(2) The office may approve a second time vehicle modification under the following conditions:~~

~~(a) The eligible individual has demonstrated a two (2) year~~

~~continuous work history;~~

~~(b) The eligible individual's employer attests that the modification is needed to maintain employment; and~~

~~(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.~~

~~Section 5. Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property shall be an allowable expenditure if determined by an office specialist to be essential to achieve the employment objective of the eligible individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The eligible individual shall meet economic need qualifications established in 781 KAR 1:030, Section 2. The eligible individual shall use recoverable, nonpermanent modifications if possible or cost effective.~~

~~(2) Except as provided in subsection (3) of this section, property modifications in excess of $10,000 shall not be allowed.~~

~~(3) Property modifications in excess of $10,000 shall be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes the successful achievement of the employment goal.~~]

BETH SMITH, Executive Director

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 27, 2010 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 20, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601, phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the provision of rehabilitation assistive technology services mandated by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation assistive technology services as set out in, and mandated by, Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation assistive technology services to applicants and eligible individuals with disabilities as required by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. 361.5(b)(49), 361.48(b).

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions enhance and more clearly set out expectations and requirements that individuals with disabilities have regarding maintenance of the technology devices that they obtain from the agency. Additionally, changes have been made to more clearly set out the limitations that the agency has with regard to modifications of real property. Changes have been made to better define and also enhance the requirements for obtaining a repeat modification of drivers technology and ensure that agency resources are used efficiently for the benefit of all applicants and eligible individuals with disabilities.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Assistive technology is a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing rehabilitation assistive technology devices to applicants or eligible individuals as necessary for the achievement of the employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain vocational rehabilitation assistive technology devices, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual with a disability seeking vocational rehabilitation assistive technology devices to assist in the achievement of an employment outcome, all vocational rehabilitation staff statewide that assist disabled individuals with disabilities seeking assistive technology devices.

(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: Agency staff and applicants or eligible individuals with disabilities will not have any additional requirements as a result of this amendment. The amendments only provide more specific guidance to clear up any ambiguities and to ensure that resources are used efficiently.

(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 new costs to the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both agency staff and applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining rehabilitation assistive technology devices because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

(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: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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 Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, 151B.180 to 151B.210, 29 U.S.C. 701 et seq., 705, 723, 34 C.F.R. 361.5, 361.48.

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? There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:001. Prelicensing courses of study; instructors.

RELATES TO: KRS 304.4-010, 304.9-105, 304.9-230

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-105, 304.9-230[~~, 304.9-513~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner[~~Executive Director~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-105 requires the commissioner[~~executive director~~] to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner[~~executive director~~] to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. [~~KRS 304.9-513 authorizes the executive director to promulgate administrative regulations relating to prelicensing courses for rental vehicle managing employees.~~] This administrative regulation establishes the guidelines for instructors and for courses of instruction to be completed by each individual applying for an agent[~~, specialty credit insurance managing employee, or rental vehicle managing employee~~] license in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1)[~~"Executive director" means the Executive Director of the Office of Insurance~~].

(2) "Department" is defined by KRS 304.1-050(2)[~~"Office" means the Office of Insurance~~].

Section 2. (1) Except for individuals applying for a limited line of authority as identified in KRS 304.9-230, [~~a specialty credit insurance managing employee license,~~] or a rental vehicle managing employee license, all agent applicants shall complete a course of classroom or self-instruction study, approved in accordance with subsection (3) of this section, which shall include a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for which the agent is applying.

(2) [~~Agent applicants for a rental vehicle managing employee license shall complete a prior-approved course of classroom or self-study instruction, approved in accordance with subsection (3) of this section, for this license.~~

~~(3)~~](a) A prelicensing course of study shall be approved by the commissioner or his or her[~~executive director of its~~] designee, in accordance with paragraph (c) of this subsection, prior to authorized use and shall be renewed biennially.

(b) An outline of the content of each prelicensing course of study, together with the name and qualifications of the instructors, shall be submitted in writing to the department[~~office~~]. Submission of the prelicensing course of study shall be made on Form CE/PL-100, incorporated by reference in 806 KAR 9:340, or electronically through the department's [~~office's~~] Web site, http://insurance.ky.gov [~~http://doi.ppr.ky.gov~~]. Submission of the qualifications of the instructors shall be made on Form CE/PL-200, incorporated by reference in 806 KAR 9:340, or electronically through the department's[~~office's~~] Web site, http://insurance.ky.gov [~~http://doi.ppr.ky.gov~~].

(c) In approving a prelicensing course of study, the commissioner[~~executive director~~] or his or her designee[~~its designees~~] shall consider whether the course of study covers the subject matter included in the department's[~~office's~~] current study outlines or their equivalent.

(3)[~~(4)~~] An applicant for a limited line of authority as identified in KRS 304.9-230 shall not be required to complete any prelicensing course of study for this line of authority.[~~(5) An applicant for a specialty credit insurance managing employee license shall not be required to complete a prelicensing course of study for this license.~~]

Section 3. Prelicensing courses of study and instructors filed with the commissioner[~~executive director~~] shall be accompanied by the fees as set forth in KRS 304.4-010.

Section 4. A prelicensing course of study is valid for one (1) year from the date of completion.

Section 5. The prelicensing provider shall submit proof of completion of a course of study on Form CPL-01, as prescribed in 806 KAR 9:340, or electronically through the department's[~~office's~~] Web site, http://insurance.ky.gov[~~http://doi.ppr.ky.gov/kentucky~~], for each applicant.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for instructors and for courses of instruction to be completed by each person applying for an agent license in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the statutory requirements for a prelicensing course of study, which is required for issuance of an individual insurance agent license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. This administrative regulation sets forth the specific education requirements that must be completed prior to licensing for an agent to augment the general requirement of prelicensing study in the statute. It also requires courses of study and instructors to be filed with the department, and limits the use of the course results to one year after the date of completion.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory requirement of prelicensing courses of study by explaining the minimum number of hours required, the manner in which the course may be completed, the process that a provider must follow to receive approval of the course, and the length of time that the results of a course are valid.

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

(a) How the amendment will change this existing administrative regulation: This amendment will implement changes to conform to 2010 GA HB 233, which repealed the specialty credit insurance managing employee license and transitioned the rental vehicle managing employee license to a limited line of authority in KRS 304.9-230. Additionally, the amendment changes agency names in accordance with 2010 GA HB 393.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to implement legislation enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. The amendment includes technical changes to conform to statutory changes enacted during the 2010 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation provide conforming amendments for compliance with state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact an undetermined number of future individual insurance agent applicants, future pre-licensing education providers and the approximately 27 approved prelicensing education providers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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: Prelicensing providers will be required to follow the process set forth in the administrative regulation to obtain approval of their courses and to file proof of completion of courses. Individual agent applicants will be required to follow the procedures set forth in the regulation in order to obtain and demonstrate prelicensing training prior to applying for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of taking a pre-licensing course is determined by the course provider and is not set forth in the administrative regulation. The cost of filing a prelicensing course for approval is set forth in 806 KAR 4:010 and is $50 per course and $5 per instructor.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can complete the pre-licensing training required to apply for an insurance agent license. Prelicensing providers can obtain required course approval from the Department of Insurance.

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

(a) Initially: There should not be an initial cost to implement this regulation.

(b) On a continuing basis: There should not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department 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: The department does not anticipate an increase in fees or funding will be necessary to implement 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? Tiering is not applied because this regulation applies equally to all future individual insurance agents and pre-licensing course providers.

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 De-

partment of Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

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, 304.9-105, 304.9-230

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

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

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:030. Adjusters, apprentice adjusters; licenses, restrictions.

RELATES TO: KRS 304.9-430(3)(a)[~~304.9-070~~], 304.9-430(2)(g), 304.9-432(2)(d)

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner[~~Executive Director~~] of the Department[~~Office~~] of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation restricts the persons whom an adjuster may represent thus preventing any conflicts of interest, and clarifies the circumstances under which the restriction for holding only one (1) apprentice adjuster license applies.

Section 1. (1) An independent, staff, or public adjuster's license issued to an applicant pursuant to the provisions of the Insurance Code shall not authorize representing the interest of both insurer and the insured or claimant. A licensee shall not represent the interest of both insurer and the insured or claimant.

(2) At the time of application, an applicant shall elect to act solely on behalf of:

(a) Insurers; or

(b) Persons claiming benefits under insurance or annuity contracts.

(3) A licensee shall be deemed to act in a fiduciary capacity to his principal.

(4) The commissioner[~~executive director~~] shall not issue a license to a public adjuster until the prospective licensee posts a bond or irrevocable letter of credit in the amount of $20,000[~~$1000~~] and in accordance with 806 KAR 9:210.

Section 2. [~~A license shall, by label, distinguish clearly between the following categories, as elected by the licensee pursuant to Section 1(2) of this administrative regulation.~~

~~(1) A licensee who acts solely on behalf of insurers shall be known as an "independent adjuster".~~

~~(2) A licensee who acts solely on behalf of persons claiming benefits under insurance or annuity contracts shall be known as a "public adjuster."~~

~~Section 3.~~] An individual may hold only one (1) apprentice adjuster license until the individual is issued an adjuster license in accordance with KRS 304.9-430. Once an individual has held an adjuster license in accordance with KRS 304.9-430, the individual may again be eligible to hold one (1) apprentice adjuster license.[~~Section 4. Application for License. (1) An individual applying for an adjuster license or an apprentice adjuster license shall submit a completed Form 8301.~~

~~(2) A business entity applying for an adjuster license shall submit completed Form 8301-BE.~~

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

~~(a) Form 8301, "Individual Insurance Producer License Application (7-12-2002 edition)"; and~~

~~(b) Form 8301-BE, "Business Entity License Application (7-15-2002 edition)".~~

~~(3) 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.~~]

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010 at 9 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department 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 restricts the persons whom an adjuster may represent thus preventing any conflicts of interest and clarifies the circumstances under which the restriction for holding only one apprentice adjuster license applies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide additional information to clarify the licensing requirements for adjusters and apprentice adjusters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation restricts the persons whom an adjuster may represent thus preventing any conflicts of interest and clarifies the circumstances

under which the restriction for holding only one apprentice adjuster license applies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory requirements for the licensing of adjusters and apprentice adjusters by clarifying that an adjuster must determine whether he or she represents the interests of an insurer or an insured at the time of licensure and by clarifying that if an adjuster loses his or her license, he or she is eligible to apply for an apprentice adjuster license prior to taking the adjuster examination.

(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 implement changes to conform to 2010 GA HB 233, which clearly defined the requirements for an independent, staff and public adjuster and increased the financial responsibility requirements for public adjusters. Additionally, the amendment changes agency names in accordance with 2010 GA HB 393.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to implement legislation enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. The amendment includes technical changes to conform to statutory changes enacted during the 2010 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation provide conforming amendments for compliance with state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact an undetermined number of applicants for an apprentice adjuster, independent, staff and public adjuster license.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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: Public adjuster applicants will be required to submit proof of a bond or irrevocable letter of credit in the amount of $20,000 in order to demonstrate the financial responsibility required for licensure. Additionally, adjusters who have lost their adjuster license will be permitted to apply for an apprentice adjuster license and hold that license for one year while they are the process of re-applying and re-testing for an adjuster license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Public adjusters will be responsible for the cost of obtaining a bond or irrevocable letter of credit. Costs vary depending on the issuer. The cost of a bond is typically $100 per $1,000 of coverage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can complete the requirements necessary to apply for licensure from the Department of Insurance.

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

(a) Initially: There should not be an initial cost to implement this regulation.

(b) On a continuing basis: There should not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department 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: The department does not anticipate an increase in fees or funding will be necessary to implement 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? Tiering is not applied because this regulation applies equally to all adjusters and apprentice adjusters.

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 Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

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.

(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 significant revenue for the Department of Insurance for the first year.

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:060. Identification cards.

RELATES TO: KRS 304.9-105, 304.9-390, 304.9-430, 304.9-432

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner[~~Executive Director~~] of the Department[~~Office~~] of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation permits an agent and independent, staff, public, or apprentice adjuster to have an identification card for use when he or she is outside of his or her principal place of business.

Section 1. (1) An agent licensed pursuant to KRS Chapter 304.9-105, independent, staff, or public adjuster licensed pursuant to KRS 304.9-430, or an appropriate adjuster licensed pursuant to

KRS 304.9-432[~~304.9~~] may obtain from the commissioner[~~executive director~~] an identification card issued by the Department[~~Office~~] of Insurance indicating that the agent, independent adjuster, staff adjuster, public adjuster, or apprentice adjuster is a qualified insurance representative in Kentucky.

(2) [~~An insurance agent who obtains an identification card pursuant to this administrative regulation shall pay to the executive director in advance a fee of five (5) dollars per application for each card.~~

~~(3)~~] The purpose of an identity card obtained pursuant to this administrative regulation is to identify an independent, staff, public, or apprentice adjuster as an individual authorized to investigate, negotiate, or settle insurance claims, or an insurance agent as a qualified insurance representative while selling, soliciting, or negotiating insurance or annuity contracts outside of his or her principal place of business.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department 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 permits an insurance agent and an insurance adjuster to have an identification card for use when he or she is outside of his or her principal place of business.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow for the issuance of an identification card for insurance agents and insurance adjusters to verify that they are properly licensed when they are away from their principal place of business as their actual license is required to be displayed at their principal place of business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation allows for the issuance of an identification card in addition to a license to be used to verify that an individual is properly licensed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory requirements requiring the display of a license at a licensee's principal place of business by allowing the issuance of an identification card to verify that an insurance agent and an insurance adjuster is properly licensed.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow identification cards to be issued to insurance adjusters in addition to insurance agents. The fee to obtain a card is being repealed as the Department will be offering the cards electronically through its secure Web site. Additionally, the amendment changes agency names in accordance with 2010 GA HB 393.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow insurance adjusters, who routinely service clients outside of their principal place to business, to obtain an identification card. These amendments are also necessary to implement legislation enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. This amendment allows insurance adjusters, who routinely service clients outside of their principal place of business, to obtain an identification card which will indicate to clients that they are properly licensed. This amendment also includes technical changes to conform to statutory changes enacted during the 2010 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation provide conforming amendments for compliance with state law and allow a class of licensees who typically service clients outside of their principal place of business, to have a card to identify that they are properly licensed, while still complying with the statutory requirements to display their licenses at their principal place of business.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 31,809 individuals licensed as insurance adjusters 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: As a result of this amendment, insurance adjusters will have the opportunity to obtain an identification card to use as documentation that he or she is properly licensed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of obtaining an identification card is being repealed as the cards will now be generated and issued electronically through the department's secure Web site. Insurance adjusters have the option of obtaining an identification card, but are not required to obtain a card.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can comply with the statutory requirement to display their license at their principal place of business while having documentation issued by the Department of Insurance demonstrating that they are properly licensed.

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

(a) Initially: Approximately 40 hours of staff time will be required to develop the program to generate and issue this card electronically.

(b) On a continuing basis: There should not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department 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: An increase in fees or funding will be necessary to implement this amendment.

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

administrative regulation removes the existing $5 fee to obtain an identification card as this process will be automated.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all licensees.

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 Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

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.

(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 significant revenue for the Department of Insurance for the first year.

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The department currently charges $5 per identification card. On average, we receive 82 requests for initial and duplicate identification cards per year. This administrative regulation removes the $5 as this process will be automated. Due to the low number of requests received for identification cards each year, the removal of this fee will not significantly decrease the department's revenue.

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:070. Examinations.

RELATES TO: KRS 304.1-050, 304.1-110(2), 304.4-010, 304.9-030(2), 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.9-505(5)(e), 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.~~] KRS 304.2-110(1) authorizes the Commissioner[~~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 in KRS 304.1-010. KRS 304.9-160(1) requires the commissioner[~~executive director~~] to promulgate administrative regulations developing and conducting examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the commissioner[~~executive director~~] to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the commissioner[~~executive director~~] to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-270 authorizes the commissioner[~~executive director~~] to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public[~~or~~] adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010, [~~or administrative regulations promulgated there under,~~] establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1)[~~means the Commissioner of the Department of Insurance~~].

(2) "Department" is defined by KRS 304.1-050(1)[~~means the Department of Insurance~~].

(3) "Examination" means a written examination required to license an applicant in accordance with KRS Chapter 304 for an independent adjuster, staff adjuster, public adjuster, agent, consultant, or life settlement broker license.

(4) "License" is defined by KRS 304.1-110(2).

Section 2. A completed "NAIC [~~Uniform~~] Individual Insurance Producer License[~~Licensing~~] Application", incorporated by reference in 806 KAR 9:340, for the examination and documentation demonstrating successful completion of any required prelicensing training shall be filed with the commissioner by, or on behalf of, the applicant, prior to the date scheduled for the examination. The application shall be accompanied by fees specified in KRS 304.4-010 or 806 KAR 4:010.

Section 3. Every applicant for a license who is required to take an examination shall answer correctly seventy (70) percent of the questions to successfully pass the examination.

Section 4. An applicant who takes an examination required by KRS Chapter 304 shall be permitted to take or retake an examination a total of three (3) times within 120 days of the receipt of an application by the commissioner. Applicable fees, as set out in KRS 304.4-010 and 806 KAR 4:010, Section 1(15), shall be submitted with the request to retake the examination. The request shall be made on an "Examination Retake Form", incorporated by reference in 806 KAR 9:340.

Section 5. An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

(1) For life line of authority, a life examination;

(2) For health line of authority, a health examination;

(3) For property line of authority, a property examination;

(4) For casualty line of authority, a casualty examination;

(5) For personal lines, a property and casualty personal lines examination;

(6) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(7) For variable life and variable annuity products, no examination is required.

Section 6. (1) The provisions of this administrative regulation shall apply to every individual resident applicant for a limited line of authority identified in KRS 304.9-230(1).

(2) An individual applying for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:

(a) For surety limited line of authority, a surety examination;

(b) For travel limited line of authority, a travel examination;

(c) For crop limited line of authority, a crop examination; [~~and~~]

(d) For [~~limited lines~~] credit limited line of authority, an examination shall not be required;

(e) For rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by the rental vehicle agent.

Section 7. An individual applying for a life settlement broker license shall successfully complete a life settlement examination unless exempt from examination pursuant to KRS 304.15-700(2)(b).
The examination shall be given by the commissioner or in accordance with provisions of an agreement the commissioner executes with another state.

Section 8. (1) An individual applying for a line of authority identified in KRS 304.9-430(7) or (8) shall:

(a) For property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For crop line of authority, successfully complete a crop adjuster examination.

(2) In lieu of successfully completing the crop adjuster examination required by subsection (1)(c) of this section, an individual applying for a crop line of authority may demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

Section 9. (1) If an applicant who applies to take the examinations required by KRS Chapter 304 does not take an examination or fails to pass an examination within 120 days of the filing of his or her application, the application shall become invalid, unless the commissioner[~~executive director~~] grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the department in the regular course of business.

(2) In determining good cause, the commissioner shall consider whether the delay to take the examination or the failure to pass the examination within the time period specified in subsection (1) of this section was due to extenuating circumstances beyond the applicant's control.

Section 10.[~~9.~~] Examination results are valid for one (1) year from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination shall be received by the commissioner within the same one (1) year period. After this period, the applicant shall be retested.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010 at 9 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department 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 restricts the number of times an applicant for an agent's, viatical broker's, consultant's, independent adjuster's, staff adjuster's or public adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(b) The necessity of this administrative regulation: This administrative regulation prescribes the examination process for licensees of the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the commissioner to promulgate administrative regulations developing and conducting examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the commissioner to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the commissioner to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-270 authorizes the commissioner to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing and examination by specifying the minimum passing score, procedures to retake an examination, the examination required for each line of authority and the length of time in which results are valid.

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

(a) How the amendment will change this existing administrative regulation: This amendment will implement changes to conform to 2010 GA HB 233, which clearly defined the requirements for an independent, staff and public adjuster and increased the financial responsibility requirements for public adjusters. Additionally, the amendment allows an individual to qualify for a crop line of authority under an adjuster license by successfully completing the Department's examination or by holding and maintaining an active multi-peril Crop Adjuster Proficiency Program certification from the Federal Risk Management Agency.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to implement legislation enacted by the 2010 General Assembly and to recognize the federal examination for crop adjusters.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the commissioner to promulgate administrative regulations developing and conducting examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the commissioner to promulgate administrative regulations regarding

examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the commissioner to promulgate administrative regulations regarding the required training and examination for life settlement brokers, and KRS 304.15-270 authorizes the commissioner to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation set forth the specific requirements for examinations for independent adjusters, staff adjusters and public adjusters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact an undetermined number of applicants for an agent's, life settlement broker's, consultant's, independent adjuster's, staff adjuster's, or public adjuster's license.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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: Independent, staff and public adjusters will be required to successfully complete the specific examination identified in this administrative regulation in order to be licensed by the Department of Insurance. Adjusters applying for a crop line of authority will be required to either successfully complete the Department's examination or be certified through the Crop Adjuster Proficiency Program approved by the federal Risk Management Agency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pursuant to 806 KAR 4:010, the cost to take an examination is $50 dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can complete the examination requirements necessary for licensure from the Department of Insurance.

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

(a) Initially: There should not be an initial cost to implement this regulation.

(b) On a continuing basis: There should not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department 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: The department does not anticipate an increase in fees or funding will be necessary to implement 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? Tiering is not applied because this regulation applies equally to all applicants for 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)? 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 Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

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

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

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amendment)

806 KAR 17:180. Standard health benefit plan.

RELATES TO: KRS 304.17A-080, 304.17A-250

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner[~~Executive Director~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-250(1) requires the Commissioner[~~Executive Director~~] of Insurance to define by administrative regulation one (1) standard health benefit plan. [~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department.~~] This administrative regulation establishes one (1) standard health benefit plan that may be offered by an insurer in the individual and small group markets and establishes procedures for modifications to the standard health benefit plan.

Section 1. Definitions. (1) "Department" is defined by KRS 304.1-050(2)[~~means the Department of Insurance~~].

(2) "Health Insurance Advisory Council" means the body established in accordance with KRS 304.17A-080.

(3) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders:

(a) Established by the department in accordance with KRS 304.17A-250 and any other health insurance benefit mandated by the General Assembly; and

(b) Included in the Kentucky Standard Health Benefit Plan, HIPMC-SP1.

Section 2. Modification Process. (1) The standard health benefit plan shall remain in effect until the plan or any form is modified

in accordance with the procedures established by this section.

(2) The standard health benefit plan may be modified each year and each modification shall apply to each policy or certificate issued or renewed on or after July 15.

(3) A person wishing to make a recommendation for modification of the standard health benefit plan shall:

(a) Submit the recommendation, in writing, to the Kentucky Department of Insurance, Health and Life Division [~~of Health Insurance Policy and Managed Care~~], by May 1 of the year preceding the year in which each modification is recommended for implementation;

(b) Explain the need for each recommended modification; and

(c) Provide a statement regarding the cost effect of each recommended modification.

(4) Prior to July 1 of each year:

(a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration;

(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with KRS 304.17A-080(3);

(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a standard health benefit plan shall:

(a) Implement each modification to the standard health benefit plan prescribed by the department; and

(b) Amend each policy form and rate filing to include modifications to the standard health benefit plan.

Section 3. Incorporation by Reference. (1) "The Kentucky Standard Health Benefit Plan, HIPMC-SP1", (7/2010)[~~(7/2008)~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at http://insurance.ky.gov [~~http://doi.ppr.ky.gov/kentucky/~~].

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010 at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department 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: The regulation establishes the Kentucky Standard Health Benefit Plan and the process for submitting changes to this plan.

(b) The necessity of this administrative regulation: KRS 304.17A-250(1) states that the commissioner "shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets. Except as may be necessary to coordinate with changes in federal law, the commissioner shall not alter, amend, or replace the standard health benefit plan more frequently than annually."
2010 Ky. Acts Ch. 150 requires health benefit plans (including the standard health benefit plan) to provide coverage for autism spectrum disorders.

(c) How does this administrative regulation conform to the content of the authorizing statutes: The regulation provides procedures for submitting changes to the Standard Health Benefit Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides form filing procedures and provides the amendments to this plan, including amendments to increase the coverage benefit for autism spectrum disorders as required by 2010 Ky. Acts ch. 150.

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

(a) How the amendment will change this existing administrative regulation? The amendment will make technical corrections and will amend the material incorporated by reference in conformance with changes created by the 2010 Legislative session and Patient Protection and Affordable Care Act ("PPACA") Pub. L. 111-148.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes made by state and federal law into the Kentucky Standard Health Benefit Plan.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-250 requires the Commissioner to establish the Standard Health Benefit Plan. This amendment will revise the standard health benefit plan in conformance with changes in state and federal law.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.17A-250 requires the Commissioner to establish the Standard Health Benefit Plan. This amendment will revise the standard health benefit plan in conformance with changes in state and federal law. Insurers offering the revised standard health benefit plan will be in compliance with the revised laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Amendment to this administrative regulation will affect Kentucky Access and three (3) insurers who have individuals covered under a standard health benefit plan. Additionally any insurer with a health line of authority may file forms to offer the standard health benefit plan.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These entities will be required to make conforming amendments to their forms after the effective date of this regulation. Once the filing is approved, the entities will need to implement the change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These entities will be responsible for a filing fee of five dollars to amend a form. The cost to implement a change in a product is specific to the entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Entities will have a revised standard health benefit product in compliance with state and federal law.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have a standard health benefit plan product.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance, specifically the Health and Life Division.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 (1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-250(1) states that the commissioner "shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets. Except as may be necessary to coordinate with changes in federal law, the commissioner shall not alter, amend, or replace the standard health benefit plan more frequently than annually." 2010 Ky. Acts Ch. 150 requires health benefit plans (including the standard health benefit plan) to provide coverage for autism spectrum disorders.

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 amended regulation should not generate additional 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? The amended regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(Amendment)

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

RELATES TO: 2010 ES Ky Acts ch. 1, Part XII, secs. 1-8, 12[~~2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12~~]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2010 ES Ky Acts ch. 1, Part XII, sec. 2(3)(b)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(3)(b)~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.~~] KRS 304.2-110(1) authorizes the Commissioner[~~Executive Director~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2010 ES Ky Acts ch. 1, Part XII, sec 2(3)(b)[~~2008 Ky Acts ch. 127, Part XII, sec 2(3)(b)~~] requires the department[~~office~~] to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions representing the top twenty (20) high-cost conditions in the small group market.

Section 1. Definitions. (1) "Eligible employee" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(3)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(3)~~].

(2) "High-cost condition" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(5)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(5)~~].

(3) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 2(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(1)~~].

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

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

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

(a) Anoxic brain injury, which shall be limited to anoxic brain injury associated with:

1. Drowning and nonfatal submersion; or

2. Intrauterine hypoxia and birth asphyxia;

(b) Ascites;

(c) Back disorder, which shall be limited to:

1. Lumbar or Lumbosacral disc degeneration; or

2. Lumbar disc displacement;

(d) Brain tumor;

(e) Burn, which shall be limited to full-thickness skin loss involving ten (10) percent or more of body surface;

(f) Cancer, which shall be limited to:

1. Ewing's sarcoma;

2. Hodgkin's disease;

3. Leukemia;

4. Lymphoid leukemia;

5. Malignant neoplasm of breast;

6. Metastatic cancer;

7. Myeloid leukemia; or

8. Primary cancer;

(g) Cirrhosis of the liver;

(h) Endocrine disorder, which shall be limited to:

1. Insulin dependent diabetes mellitus; or

2. Enzyme deficiency disorder which shall be limited to inborn errors of metabolism;

(i) Heart condition, which shall be limited to:

1. Acute myocardial infarction;

2. Angina pectoris;

3. Cardiac valve disorder;

4. Cardiomyopathy;

5. Congenital cardiac anomaly;

6. Coronary insufficiency;

7. Coronary occlusion;
8. Heart failure;
9. Injury to heart or lung;
10. Ischemic heart disease;
11. Pulmonary atresia;
12. Pulmonary hypertension; or
13. Status post open-heart surgery;
(j) Hemophilia,
(k) Hypersomnia with sleep apnea;
(l) Lung condition, which shall be limited to:
1. Chronic airway obstruction;
2. Disease of the lung; or
3. Post inflammatory pulmonary fibrosis;
(m) Kidney condition, which shall be limited to:
1. Chronic renal failure;
2. End stage renal disease; or
3. Polycystic kidney;
(n) Morbid obesity;
(o)Multiple sclerosis;
(p) Organ or tissue replaced by transplant;
(q) Psychotic disorder;
(r) Rhabdomyolysis;
(s) Stroke; or
(t) Trauma, which shall be limited to:
1. Fracture or complete lesion of cord; or
2. Multiple trauma.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 21, 2010

FILED WITH LRC: June 23, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of high-cost medical conditions for the ICARE Program.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII of the 2010 1st Extraordinary Session continues the ICARE Program as a pilot program for the next two fiscal years for those who were approved for participation as of June 15, 2010 and requires the Department to establish a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICRE Program based on information received from ICARE participating insurers offering health benefit plans in the small group market.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the list of ICARE Program high-cost conditions.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update statutory references.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate authority for the ICARE Program, which was re-established in HB 2, Part XII, during the 2010 1st Extraordinary Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII of the 2010 1st Extraordinary Session continues the ICARE Program as a pilot program for the next two fiscal years for those who were approved for participation as of June 15, 2010 and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(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: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

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

(a) Initially: There will be no cost to implement this regulation.

(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: If any costs arise, the budget of the Kentucky Department 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 participants in the ICARE Pro-

gram.

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 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, 2010 ES Ky. Acts ch. 1, Part XII, secs. 1-8, 12

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:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(Amendment)

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

RELATES TO: 2010 ES Ky Acts ch. 1, Part XII, secs. 1-8, 12, KRS 304.1-050(2), 304.9-020(1), 304.17A-005(22)[~~2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12~~]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2010 ES Ky Acts ch. 1, Part XII, secs. 1(2), 1(3), 2(5)[~~2008 Ky Acts ch. 127, Part XII, secs. 1(2), 1(3), 2(5)~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.~~] KRS 304.2-110(1) authorizes the commissioner[~~executive director~~] of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2010 ES Ky Acts ch. 1, Part XII, sec. 1(2) and (3)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(2) and (3)~~] require the department[~~office~~] to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2010 ES Ky Acts ch. 1, Part XII, sec. 2(5)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(5)~~] requires the department[~~office~~] to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

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

(2) "Complete ICARE Program renewal application" means the ICARE Program renewal application, ICARE-APP-1, with all fields completed and all required attachments, including:

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

1. Quarterly unemployment tax statement; or

2. Payroll register;

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

1. The employer group is participating in the ICARE Program as a previously uninsured group; or

2. The employer group is participating in the ICARE Program under the high cost condition category and the employer group has changed coverage during the ICARE Program year;

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

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

(d)[~~(e)~~] Any additional attachments, if applicable.

(3) "Department" is defined in KRS 304.1-050(2)[~~means the Department of Insurance~~].

(4) "Eligible employee" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(3)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(3)~~].

(5) "Eligible employer" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(2)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(2)~~].

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

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

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

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

(7) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

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

(10) "Health care incentive payment" means a payment as established in 2010 ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1)[~~2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)~~].

(11) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 2(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(1)~~].

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

(a) Defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(5)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(5)~~]; and

(b) Established in 806 KAR 17:540.

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

(14) "ICARE Program participating insurer" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(6)[~~2008 Ky Acts ch. 127, Part XII, sec.1(6)~~].

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

(16) "Insurer" is defined in KRS 304.17A-005(27).

(17) "Qualified health benefit plan" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(8)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(8)~~].

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2010 Ky Acts ch. 127, Part XII, sec. 1(2)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(2)~~], the department shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300 percent of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 2(4)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(4)~~], the department shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

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

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

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

~~(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within 120 days of receiving notice of approval for coverage under a qualified health benefit plan;~~

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

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

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

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

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

~~(c) If applicable:~~

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

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

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

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

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

~~(b) Any information that is missing or incomplete.~~

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

~~(4) Upon approval of ICARE Program eligibility by the department under a program eligibility category as established in 2008 Ky Acts 127, Part XII, sec. 2(3), an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.~~

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

Section 4.[~~6.~~] Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the department shall send a renewal notification to an ICARE Program participating employer.

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

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

(b) A complete ICARE Program renewal application; and

(c) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8[~~2008 Ky Acts ch. 127, Part XII, secs. 1 through 8~~].

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

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

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

(c) If applicable:

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

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

(4) Within thirty (30) days of receiving a request for renewal, the department shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 5.[~~7.~~] Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8[~~2008 Ky Acts ch. 127, Part XII, secs. 1 through 8~~]:

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 4(5)[~~2008 Ky Acts ch. 127, Part XII, sec. 4(5)~~];

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

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

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 8[~~10~~] of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of

this section;

(b) The termination date, which shall be:

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

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

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

Section 6.[~~8.~~] Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 [~~or 6~~] of this administrative regulation or termination by the department pursuant to Section 5[~~7~~] of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing. A request for reconsideration shall include:

(a) A description of the basis for reconsideration; and

(b) Any new relevant information including documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8 that was not provided with the written request for renewal [~~and shall provide the basis for reconsideration, including any new relevant information~~].

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

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

Section 7.[~~9.~~] ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2010 ES Ky Acts ch. 1, Part XII, sec. 4(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 4(1)~~] for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department based on the employer's ICARE Program application or ICARE Program renewal.

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

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

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

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2010 ES Ky Acts ch. 1, Part XII, Sec. 4(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 4(1)~~].

Section 8.[~~10.~~] Annual Review. The department may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8[~~2008 Ky Acts ch. 127, Part XII, secs. 1 through 8~~]; 806 KAR 17:540 and 17:555; and this administrative regulation; and

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

Section 9.[~~11.~~] Response to Department Inquiry. If an employer receives an inquiry from the department relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 10.[~~12.~~] Incorporation by Reference. (1) "ICARE-APP-1", 7/2010[~~7/2008~~], is incorporated by reference.

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

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 21, 2010

FILED WITH LRC: June 23, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 2, Section XII, enacted during the 2010 1st Extraordinary Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for employers whose applications were approved as of June 15, 2010, and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

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

review and payment of health care incentives.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update statutory references and remove the requirements related to new applicants.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 2, Part XII, during the 2010 1st Extraordinary Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for employers who had an application approved by June 15, 2010. HB 2 further requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the correct references to the statutory authority for the ICARE Program and remove references to new applicants as HB 2 closed the program to new applicants after June 15, 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the existing ICARE members or the health insurance agents assisting in the application process. As HB 2 closed the program to new enrollment as of June 15, 2010, there may be small employers who did not apply as of that date that will be unable to receive the premium subsidy offered by this program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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: ICARE participating employers will continue to comply with the requirements of this administrative regulation to ensure renewal in the program and the continued receipt of health care incentive payments. Employers will be required to provide a written request for renewal, a renewal application, and supporting documentation in order to maintain eligibility in the ICARE Program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, participating employers will continue to receive the health care incentive payments afforded under the program.

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

(a) Initially: There will be no cost to implement this regulation.

(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: If any costs arise, the budget of the Kentucky Department 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 ICARE Program participants.

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 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, 2010 ES Ky. Acts ch. 1, Part XII, secs. 1-8, 12.

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:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(Amendment)

806 KAR 17:555. ICARE Program requirements.

RELATES TO: KRS 304.1-050(2), 304.14-120, 304.14-430-304.14-450, 304.17A-095 -304.17A-0954, 2010 ES Ky Acts ch. 1, Part XII, sec. 1-8[~~2008 Ky Acts ch. 127, Part XII, secs. 1-8,~~], 42 U.S.C. 1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2010 ES Ky Acts ch. 1, Part XII, secs. 2(5) and 8(2)[~~2008 Ky Acts ch. 127, Part XII, secs. 2(5) and 8(2)~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.~~] KRS 304.2-110(1) authorizes the commissioner[~~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. 2010 ES Ky Acts ch. 1, Part XII, sec. 2(5)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(5)~~] requires the department[~~office~~] to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2010 ES Ky Acts ch. 1, Part XII, sec. 8[~~2008 Ky Acts ch. 127, Part XII, sec. 8~~] requires an insurer which offers a health benefit plan to disclose

the availability of a health insurance purchasing program as authorized in 42 U.S.C. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

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

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

(3) "Consumer-driven health plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(1).

(4) "Department" is defined by KRS 304.1-050(2)[~~means the Department of Insurance~~].

(5) "Eligible employee" is defined by 2010 ES Ky Acts ch. 1, Part xII, sec. 1(3)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(3)~~].

(6) "Eligible employer" is defined by[~~in~~] 2010 ES Ky Acts ch. 1, Part XII, sec. 1(2)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(2)~~].

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

(8) "Health care incentive payment" means a payment as established in 2010 ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1)[~~2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)~~].

(9) "Health risk assessment" is defined by 2010 ES Ky Acts ch. 1, Part XII, sec. 1(4)[~~2008 Ky Acts ch. 127, Part XII, sec. 1(4)~~].

(10) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 2(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 2(1)~~].

(11) "ICARE Program participating insurer" is defined by 2010 Ky Acts ch. 1, Part XII, sec. 1(6)[~~in 2008 Ky Acts ch. 127, Part XII, sec. 1(6)~~].

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

(13) "Qualified health benefit plan" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(8)[~~in 2008 Ky Acts ch. 127, Part XII, sec. 1(8)~~].

(14) "Small group" is defined by[~~in~~] KRS 304.17A-005(42).

Section 2. Health Risk Assessment. An ICARE Program participating insurer shall:

(1) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the department, conduct a health risk assessment as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 3(4)[~~2008 Ky Acts ch. 127, Part XII, sec. 3(4)~~] for each eligible employee of the employer; and

(2) Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section, and pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 3(4)[~~2008 Ky Acts ch. 127, Part XII, sec. 3(4)~~], offer the following:

(a) A wellness program;

(b) Case management services; and

(c) Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the department for use in the small group or employer-organized association market shall be deemed qualified health benefit plans.

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2010 ES Ky Acts ch. 1, Part XII, sec. 3(2) and (4),[~~2008 Ky Acts ch. 127, Part XII, sec. 3(2) and (4),~~] the insurer shall submit for approval by the department, a:

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

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

Section 4. Requirements of Disclosure. Pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 8(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 8(1)~~], a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format;

(2) Include information relating to availability of the:

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

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;

2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 4(1)[~~2008 Ky Acts ch. 127, Part XII, sec. 4(1)~~];

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

4. Department Web site and toll-free telephone number of the ICARE Program; and

(3) Be submitted annually to the department for review.

Section 5. ICARE Program Data Reporting Requirements. (1)(a) An ICARE Program participating insurer shall designate a contact person to respond to inquiries of the department[~~office~~] relating to the ICARE Program and provide to the department[~~office~~] the contact person's:

1. Name;

2. Telephone and fax numbers; and

3. Electronic mail address; and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the department within fifteen (15) days of the date of the change.

(2) No later than the 15th day of each month, the department shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group; and

(c) The ICARE Program year effective date.

(3) Each ICARE Program participating insurer shall collect the following information monthly for each ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group;

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

(d) Month of coverage;

(e) Average monthly premium of each eligible employee;

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

(g) Termination date, if applicable.

(4) No later than the 20th day of each month, an ICARE Program participating insurer shall report to the department information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.

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

(a) Include for each ICARE Program participating employer:

1. ICARE Program identification number;

2. Name of the employer group; and

3. Average annual premium paid; and

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

1. No later than February 1, for the previous calendar year; and

2. In an electronic or written format.

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

(1) 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8[~~2008 Ky Acts ch. 127, Part XII, secs. 1 through 8~~]; 806 KAR 17:540; 806 KAR 17:545; and this administrative regulation; and

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

Section 7. Incorporation by Reference. (1) "ICARE Report-1", 7/2008, is incorporated by reference.

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

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 21, 2010

FILED WITH LRC: June 23, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the ICARE Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program and ICARE Program, data reporting, and annual review by the Department of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports and the annual review by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII of the 2010 1st Extraordinary Session continues the ICARE Program as a pilot program for the next two fiscal years for those participating in the program as of June 15, 2010 and requires the Department to establish guidelines for determination of preference for employer groups based upon federal poverty levels, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining terms and establishing standards for the manner and content of a disclosure of the availability of the HIPP program. Additionally, this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review.

(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 corrects statutory references as a result of legislation enacted during the 2010 1st Extraordinary Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was reestablished in HB 2, Part XII, during the 2010 1st Extraordinary Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for those who were approved for participation in the program as of June 15, 2010 and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(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: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

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

(a) Initially: There will be no cost to implement this regulation.

(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: If any costs arise, the budget of the Kentucky Department 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 insurers participating in the ICARE Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department 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, 2010 Ky. Acts ch. 1, Part XII, secs. 1-8, 12.

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 Public Health
Division of Adult and Child Health Improvement
(Amendment)

902 KAR 30:001. [~~Kentucky Early Intervention Program~~] Definitions.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676

NECESSITY, FUNCTION, AND CONFORMITY: [~~The Cabinet for Health Services is directed by~~] KRS 200.650 to 200.676 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulation pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility in First Steps to identify the child's unique strengths and needs, and the services appropriate to meet those needs; and the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.[~~activities completed to develop a service plan for an eligible child and his family;~~]

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan;

(3) "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device.

(4) "Child find" is[~~means~~] as defined by[~~in~~] KRS 200.654(3).[~~;~~

~~(4) "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm referenced test. It is not an extrapolated score based on a screening test;~~]

(5) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.[~~;~~]

(6) "Disciplines" means those professionals recognized by First Steps to practice in early intervention services.[~~;~~]

(7) "District Early Intervention Committee" or "DEIC" is[~~means as~~] defined by[~~in~~] KRS 200.654(6).[~~;~~]

(8) [~~"District technical assistance team" means a professional and a parent of a child with a disability combined staffing unit for the purpose of providing technical assistance, training, and support to families and providers in the local community;~~

~~(9)~~] "Early intervention services" is[~~means as~~] defined by[~~in~~] KRS 200.654(7).

(9)[~~;~~

~~(10)~~] "Early intervention team" means two (2) or more disciplines providing services to a child and family which employ any one (1) of the team models that include a multidisciplinary team.

(10) "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.[~~;~~]

(11) "Evaluation" means the use of [~~standardized norm-referenced~~] procedures to determine eligibility for First Steps services.[~~;~~]

(12) "Family centered" means practices that are driven by the families priorities and concerns; support the family's role as[~~the recognition that the family is~~] the constant in a child's life; complement a family's natural activity settings and daily routines, and [~~that services and personnel must~~] support, respect, encourage, and enhance the strengths,[~~strength and~~] competence, and confidence of the family.[~~;~~]

(13) [~~"Family directed" means the recognition that a family has choices and that services are provided in accordance with the family's priorities, concerns, and values;~~

~~(14)~~] "First Steps" means Kentucky's early intervention system and is defined by[~~as defined in~~] KRS 200.654.

(14) "Homeless child" is defined by Pub.L. 107-110 Section 725(2) and (6) of the McKinney-Vento Homeless Assistance Act.[~~;~~]

(15) "Interdisciplinary team" means professionals of one (1) or more disciplines working together with an integrated approach to[~~cooperatively in~~] both planning and delivering services to the eligible child in accordance with the IFSP. [~~Emphasis is upon teamwork and interaction among team members who help and rely upon each other to provide well coordinated services, although each discipline ultimately delivers the services in its own domain.~~]

(16) "Image Consistency Kit" means the guidelines developed by the Interagency Coordinating Council Public Awareness committee for the purpose of ensuring that any use of the First Steps logo and other public awareness materials shall be consistent and in conformity with exact specifications set forth by the committee.[~~;~~]

(17) "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.[~~;~~]

(18) "Individualized family service[~~services~~] plan" or "IFSP" is[~~means as~~] defined by[~~in~~] KRS 200.654(9).[~~;~~]

(19) "Kentucky High Risk Hearing Registry" is[~~means as~~] defined by[~~in~~] KRS 213.046.[~~;~~]

(20) "Mentorship" is[~~means~~] a limited period of one (1) year of indirect supervision.[~~;~~]

(21) "Multidisciplinary team" is[~~means as~~] defined by[~~in~~] KRS

200.654(11).[;]

(22) "Natural environments" means settings, such as the home and the community, in which the child's age peers who have no disability normally participate.[;]

(23) "Parent" means:

(a) A natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by state law from serving as a parent);

(b) A guardian (but not the state if the child is a ward of the state);

(c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) Except as used in sections 615(b)(2) and 639(a)(5) of Pub.L. 108-446, an individual assigned under either of those sections to be a surrogate parent.

(24) "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by parent or legal guardian inclusive of disappearance;

(d) Change of residence to another[out of] state.

(25)[;

(24)] "Point of entry" or "POE" is[means as] defined by[in] KRS 200.654(12) and is also called the local lead agency;

(26)[(25)] "Prematurity" means[shall mean] a gestational age, at birth, of less than thirty-seven (37) weeks.

(27)[;

(26)] "Primary referral source" means those in the community who have the greatest opportunity, by virtue of their work, their relationship to children [of this age,] or their special knowledge[,] to refer a child to First Steps.

(28) "Primary service provider" means one (1) professional who is a member of the IFSP team selected as the team lead who provides regular support to the family.

(29)[;

(27) "Primary service coordinator" or "PSC" means the person responsible for coordination of services after the POE initial service coordinator has completed his responsibilities for IFSP development;

(28)] "Provider action" means actions or decisions by the First Steps staff, and actions or decisions made by service providers relating to the identification, evaluation, and placement of the child or the provision[provisions] of appropriate early intervention services.

(30)[(29)] "Qualified service provider" is[means as] defined by[in] KRS 200.654(13).

(31) "Referral" means a child identified between birth and three (3) years of age who is a Kentucky resident or a homeless child within the boundaries of the Commonwealth and is suspected of having an established risk diagnosis or a developmental delay as confirmed by the cabinet approved screening protocol.

(32) "State Technical Assistance Team" means a team consisting of early intervention professionals and at least one (1) parent of a child with a disability who assist the State Lead Agency by providing technical assistance, training, and support to the Points of Entry and families to assure that the early intervention system is meeting performance indicators and the needs of families.

(33) "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303 Part C of Individuals with Disabilities Education Improvement Act (IDEA) and KRS 200.650 to 200.676.

(34)[; (30) "Teratogen" means an agent causing fetal malformations.

(31)] "Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members.

(35) "Ward of the state" means a child who, as determined by the state where the child resides, is a foster child or is in the custody of a public child welfare agency, but does not include a foster child who has a foster parent who meets the definition of a parent in subsection (23) of this section.

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides definitions unique to the early intervention system as defined by Pub.L. 108-446, the Individuals with Disabilities Education Improvement Act.

(b) The necessity of this administrative regulation: 902 KAR 30:001 is necessary to define specific terminology used in the early intervention system.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650 requires that the Cabinet for Health and Family Services be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions: assistive technology devices and services, established risk, homeless child, parent, primary service provider, referral, and ward of the state. The amendment modifies the definitions of interdisciplinary team and regional technical assistance team. The amendment deletes the following definitions: developmental quotient, family directed, primary service coordinator, and teratogen.

(b) The necessity of the amendment to this administrative regulation: Assistive technology devices and services (34 C.F.R.303.12 (d) 1 and (34 C.F.R. 303.12 (d) (1) (i-vi) respectively), homeless child, parent (34 C.F.R. 303.19; Pub.L. 107-110 Section 725 (2) and (6)) and ward of state were added for compliance with federal funds in order to receive federal funding. The definition of referral was added to provide clarification of when the federally-mandated timeline begins. Some terminology was added for clarity and guidance. Developmental quotient, family directed, primary service coordinator, and teratogen were removed because these are terms no longer used in the early intervention system.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires compliance with federal law as it pertains to services for infants and toddlers with disabilities and their families.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice. Individuals who previously performed the duties of Primary Service Coordinators have been hired by Points of Entry provider or enrolled in First Steps as another type of qualified providers or left the early intervention service system for employment in another field.

(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 to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for continued funding and participation in First Steps.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis: There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during 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? There will be no revenues generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal Statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart A-General list the definitions commonly used in early intervention services. As a recipient of federal Part C monies, Kentucky Early Intervention Services is mandated to fully comply with all federal statutes. The changes in the definitions bring KEIS into full compliance with this federal statute and are required for continued receipt of those funds.

2. State compliance standards.KRS 200.650 charges the Cabinet for Health and Family Services and the Department for Public Health to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding definitions the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements

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

902 KAR 30:110. [~~Kentucky Early Intervention Program~~] Point of Entry and service coordination.

RELATES TO: KRS 200.650-200.276, 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 250.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation sets forth the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child find efforts with local education agencies in order to insure compliance with child find mandates by each entity;

and other state and federal programs serving this population. These include, but are not limited to:

(a) Maternal and child health programs;

(b) Early and periodic screenings, diagnosis, and treatment (EPSDT) programs;

(c) Head Start;

(d) Homeless shelters;

(e) Supplemental Security Income (SSI) programs; and

(f) Programs authorized through 42 U.S.C 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.

(2) The POE staff shall develop a child find activity plan approved by the Part C Coordinator to be conducted in each district.

(3) The POE staff shall maintain accessibility and provide public awareness activities in each district as required by the cabinet.

(4) The POE staff shall maintain communication with the District Early Intervention Council (DEIC), state lead agency, and state technical assistance staff on matters of child find, service options, and other issues relevant to the First Steps Program.

(5) The POE staff shall accept all inquiries for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written inquiry, POE staff shall determine if:

1. The family is aware that an inquiry is being made; and

2. The referral is appropriate based on:

a. The child's age shall be between birth and three (3) years old;

b. The family's residence within the assigned district or that the family is homeless; and

c. An established risk diagnosis or a developmental concern that is confirmed by administration of the cabinet approved screening protocol.

(b) If the initial screening finds the referral to be inappropriate, the POE shall:

1. Provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:

a. Public schools;

b. The Department for Community Based Services;

c. Medical services; or

d. Other appropriate community services; and

e. Another POE if residency alone is the reason for an inappropriate referral.

2. Provide a parent with notice of action refused in accordance with 34 C.F.R. 303.403(b).

(c) If it is determined that the referral is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days of receipt of referral.

(d) If the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(e) If a family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall:

1. Document in the child's record the refusal of services; and

2. Send a letter to the referral source explaining refusal of services by the family.

(f) If efforts to contact the family by telephone or in writing fail, the POE staff shall send a follow-up letter to the family within ten (10) working days of the referral.

(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral if known at that time.

(6) All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but will connect the parent or guardian with the local education agency, or other community resource.

(7) The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested.

(8) The POE staff shall provide a written monthly data report as defined by the state lead agency to the DEIC.

(9) The POE staff shall collect and maintain the District Service Provider Directory and shall provide information to the cabinet on a regular basis.

Section 2. Service Coordination. (1) The service coordinator shall:

(a) Serve as the main point of contact in helping families obtain the services and assistance they need;

(b) Complete the core service coordination training prior to the initiation of service delivery; and

(c) Complete all training as required by the Cabinet for Health and Family Services within the specified timeline.

(2) During the initial visit to the family, the service coordinator shall:

(a) Identify the purpose of the visit;

(b) Explain the First Steps service delivery system;

(c) Explain the family rights by reviewing the Family Rights Handbook and the statement of assurances;

(d) Obtain the signature of a parent or guardian on the statement of assurances;

(e) Request the release of information from a parent or guardian for medical or developmental information, risk indicators, other diagnostic, or hearing test results;

(f) Determine the willingness of the family to participate in First Steps services or refusal of services;

(g) Interview family and other individuals identified by the parents who are significant in the child's life and document findings relating to:

1. The child's developmental status;

2. The pregnancy, birth, and health information;

3. Social relationships; and

4. Context for learning, including the family's history, resources, priorities, and concerns.

(h) Conduct the routines based interview to determine daily routines and activities, the family's satisfaction level with these routines, and the family's desired outcomes.

(i) Determine the next action needed with the family to determine eligibility of the child;

(j) Discuss evaluation and service options;

(k) Establish the potential date for developing an Individual Family Service Plan (IFSP);

(l) Discuss the role of the service coordinator; and

(m) Collect insurance information and data necessary for billing.

(3) The service coordinator must:

(a) Notify parents, in accordance with the parental prior notice requirements of 34 C.F.R. 303.403, and all the IFSP team members in writing of the initial and annual Individual Family Service Plan (IFSP), six (6) month review, and any other IFSP team meeting or the transition conference date and location no less than fourteen (14) calendar days prior to the IFSP, review, or transition conference date.

1. If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting;

(b) Facilitate the initial, annual and, six (6) month review IFSP meetings and IFSP meetings requested to address revisions; and

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) days of the meeting and provide copies to persons identified and consented to by the family;

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130 Section 2(7)(i); and

5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.

(4) The service coordinator shall inform the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook at the initial IFSP,

at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards and due process rules, and ensuring that the family reviews and signs the statement of assurances found in the Family Rights Handbook at every IFSP review;

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district, including recent rules regarding funding sources;

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family;

(c) Making the family aware of community activities that would benefit from their participation, such as becoming a member of the District Early Intervention Committee; and

(d) Assisting the Point Of Entry (POE) in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.

(6)The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8) The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.

(9) If a family desires a change in their service coordinator, they shall contact the POE and the POE shall seek to resolve the situation.

(10) The service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as outlined in 902 KAR 30:130, and ensuring that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

(b) Holding a transition conference at least ninety (90) days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the Part B local school district representative, and staff from potential next placement options; and

(c) Including at least one transition outcome as a part of every IFSP that is supported by steps.

(11) The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within seven (7) days of the date of service and include:

(a) The date of contact;

(b) Amount of time spent;

(c) Reason for contact;

(d) Type of contact whether by telephone or face to face;

(e) Result of contact; and

(f) Plan for further action.

(12) Service coordinator shall document notes on the First Steps data management system all contacts attempted but not made, and the reason if services were not delivered in a timely manner.

(13) The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(14) If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.403 to the family which includes what services are terminating, and the date services will terminate, within seven (7) working days after notice from the family of their choice to end services.

(15) If the family is absent from a scheduled service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the service coordinator within seven (7) working days after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, send a letter within seven (7) working days to the providers with the result of the discussion; or

2. If no contact is made, send the family a letter within seven (7) working days:

a. Requesting direction as to the choice of the family in continuation of services;

b. Stating that the service will be discontinued until a choice is made by the family by contacting the service coordinator; and

c. Stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.

(16) The service coordinator shall be responsible for securing any release of information necessary to send or secure information, upon request from other service providers, including non First Steps providers involved in the care of the child.

(17)The service coordinator shall provide data to the cabinet upon request.

(18) The service coordinator shall limit practice in First Steps to service coordination only.

Section 3. Determination of Child's Hearing Status. (1) All children referred to First Steps will have a verbal risk assessment performed for suspected hearing impairments prior to the initial IFSP meeting. For a birth to three (3) year old child who:

(a) Is "at risk" as indicated in Kentucky CHILD and confirmed by the Early Hearing Detection and Intervention Data Base and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological evaluation has been performed, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(b) Is suspected of having a hearing problem, but not suspected of having any developmental problems, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(c) Has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970.

Section 4. Incorporation by Reference. The following materials are incorporated by reference:

(1) "Family Rights Handbook", July 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~[The point of entry (POE) staff shall coordinate child-find efforts with local education agencies in order to insure compliance with child find mandates with each party.~~

~~(2) The POE staff shall coordinate child find efforts with other state and federal programs serving this population, including ma-~~

~~ternal and child health programs, early and periodic screening, diagonal-sis, and treatment programs, Head Start, Supplemental Security Income Program, and programs authorized through 42 U.S.C. 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.~~

~~(3) The POE staff shall develop a child-find activity plan to be conducted in each district that includes:~~

~~(a) Completing a minimum of two (2) face-to-face contacts per month to potential referral sources in the district to explain First Steps services.~~

~~(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them avail-able to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).~~

~~(4) The POE staff shall maintain accessibility and provide public awareness activities in each district by:~~

~~(a) Having a district toll free telephone number;~~

~~(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps; and~~

~~(c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.~~

~~(5) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:~~

~~(a) Presenting a report at each DEIC meeting that includes the following information:~~

~~1. Number of referrals and referral sources since last DEIC meeting;~~

~~2. List of current service providers including deletions and additions from last meeting;~~

~~3. Report on identified gaps related to services and location; and~~

~~4. A highlight of the month's activities that include the public awareness activities; and~~

~~(b) Soliciting advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.~~

~~(6) The POE staff shall act on all referrals for First Steps services.~~

~~(a) Upon receiving a telephone or written referral, POE staff shall:~~

~~1. Determine if the family is aware that a referral is being made; and~~

~~2. Do an initial screening to determine if the referral is appropriate based on:~~

~~a. Establishing that the child's age is between birth and three (3) years old;~~

~~b. Ensuring the family's residence is within the assigned district; and~~

~~c. Confirming that there is a developmental concern or a suspected established risk diagnosis.~~

~~(b) If the initial screening finds the referral to be inappropriate, the POE shall give the referral source the appropriate resource to refer the child and family to the services that meet that child's needs. These resources include:~~

~~1. Public schools;~~

~~2. The Department for Community Based Services;~~

~~3. Medical services; or~~

~~4. Another POE.~~

~~(c) If it is determined that the referral, is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days for the purpose of:~~

~~1. Briefly informing them of First Steps' services;~~

~~2. Advising them that all services are voluntary; and~~

~~3. Ascertaining whether the family would like more information and an initial visit scheduled; and~~

~~4. Administer the Department for Public Health approved screening test.~~

~~(d) If a family is interested, the POE staff shall schedule a visit and send the family a letter to confirm the date, time and location of the visit.~~

~~(e) If a family is not interested, the family shall be informed by the POE staff that they can contact the POE at any time to reinstate the referral and the POE staff shall:~~

~~1. Document in the child's record, the refusal of services; and~~

~~2. Send a letter to the referral source explaining refusal of services by the family.~~

~~(f) If efforts to contact the family by telephone and in writing fail, in order to bring closure to the referral the POE staff shall send a follow-up letter within ten (10) working days of the referral encouraging the family to contact the POE at anytime to:~~

~~1. Initiate services; or~~

~~2. To ask further questions.~~

~~(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at the time.~~

~~(7) At the initial visit to the family, the POE staff shall:~~

~~(a) Identify the purpose of the visit;~~

~~(b) Explain the First Steps services;~~

~~(c) Explain the family rights by giving the family the "Family Rights Handbook" and review the statement of assurances;~~

~~(d) Obtain the signature of a parent on the statement of assurance;~~

~~(e) Obtain release of information for medical or developmental information from parent;~~

~~(f) Determine the willingness to participate in First Steps services or refusal of services;~~

~~(g) Interview family and other individuals identified by the parents who are significant in the child's life and record findings to help record the child's developmental status, social relationships and contexts for learning, including the family's history, resources, priori-ties, concerns, patterns, daily routines and activities;~~

~~(h) Determine the next action needed with the family to the determine eligibility of the child;~~

~~(i) Discuss evaluation and service options that include:~~

~~1. Family convenience and preference;~~

~~2. Funding sources; and~~

~~3. Natural environments;~~

~~(j) Establish the potential date for developing an Individualized Family Service Plan (IFSP);~~

~~(k) Discuss options for a primary service coordinator; and~~

~~(l) Collect data necessary for billing.~~

~~(8) All children referred to First Steps because of suspected developmental delay or established risk condition shall have the hearing checklist completed prior to the initial IFSP meeting.~~

~~(9) The POE staff shall use the following to assist in the determination of hearing status:~~

~~(a) If the referral is a birth to three (3) year old child who is "at risk" as indicated on the Kentucky High Risk Hearing Registry and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological screen has been done, the child and family shall be notified to contact their pediatrician or a clinic for an audiological screen to determine hearing status.~~

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

~~(c) If the referral is a birth to three (3) year old child with a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.~~

~~(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation.~~

~~(e) If a birth to three (3) year old child is referred because of suspected developmental delay or established risk condition, but no apparent hearing problems, the POE shall complete the hearing checklist prior to the IFSP meeting.~~

~~(10) POE staff shall coordinate the evaluation process for eligibility determination within the federally mandated time line of forty-~~

~~five (45) days from receipt of the referral.~~

~~The POE staff shall:~~

~~(a) Gather existing documentation that will be used to determine eligibility; and~~

~~(b) ensure that all releases are completed and on file.~~

~~(11) The POE staff shall make appropriate referrals to secure needed evaluations of the child's medical and developmental status.~~

~~(12) The POE staff shall ensure that referrals for needed assessments are made, the assessments are completed and that those reports shall be made available prior to the initial IFSP.~~

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

~~(b) The POE staff shall request copies of the completed assessment reports to be included in the child's record and used in the development of initial IFSP.~~

~~(c) The POE staff shall send all future assessment reports to the primary service coordinator.~~

~~(13) The POE staff shall coordinate and ensure completion of the initial individualized family service plan (IFSP) meeting within the federally mandated time line of forty-five (45) calendar days from receipt of referral.~~

~~(a) The POE staff shall assist the family in identifying the IFSP team members and discuss a potential primary service coordinator.~~

~~(b) Once a potential primary service coordinator has been suggested, the POE staff shall contact that person and confirm his willingness to function as the primary service coordinator.~~

~~(c) After releases of information signed by the parent have been obtained, the POE staff shall send copies of the following information to the requested primary service coordinator:~~

~~1. Initial referral information;~~

~~2. Developmental and social history;~~

~~3. Any available evaluation reports; and~~

~~4. Any available assessment reports.~~

~~(d) The POE staff shall send notices to all identified IFSP team members of the upcoming IFSP meeting date, time, and location.~~

~~(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:~~

~~1. Confirm the time and place of the meeting;~~

~~2. Determine whether transportation is needed;~~

~~3. To reiterate the purpose of meeting; and~~

~~4. To answer questions.~~

~~(f) If the developmental and medical evaluators, family, and POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held. If any one (1) member disagrees or still has concerns, a meeting shall be held.~~

~~(g) The POE staff shall facilitate the initial IFSP meeting by:~~

~~1. Leading introductions;~~

~~2. Reviewing the purpose of the meeting;~~

~~3. Explaining the family rights and responsibilities for participation, the array of services currently available, and the service delivery approaches which include family centeredness, natural environments and transdiciplinary services; and~~

~~4. Discussing and leading the IFSP team to verify eligibility based on collected documentation.~~

~~a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.~~

~~b. If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can recontact the POE any time for reevaluation.~~

~~c. If the child is eligible and the family is interested in services, the POE staff shall:~~

~~(i) Develop an IFSP ensuring that all IFSP components are included; and~~

~~(ii) Introduce the primary service coordinator.~~

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

~~(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;~~

~~(j) The POE staff shall, within five (5) working days of the IFSP meeting, make available, through appropriate releases, to the primary service coordinator the following:~~

~~1. The completed IFSP;~~

~~2. Any evaluation reports not previously sent; and~~

~~3. Any assessment reports not previously sent.~~

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

~~(l) The POE staff shall send the necessary documentation of service decisions to the billing agent within five (5) working days after the IFSP meeting.~~

~~(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.~~

~~(14) The POE staff shall:~~

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

~~(b) Keep on file copies of all IFSP and reviews sent from the primary service coordinator;~~

~~(c) Assist primary service coordinators in transition of children from First Steps services to future services; and~~

~~(d) Track and notify the primary service coordinator that a transition conference shall be completed within the federal time frame of no less than ninety (90) days prior to the child's third (3) birthday by:~~

~~1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held; and~~

~~2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days, after the meeting has been held. This plan shall include at least:~~

~~a. Basic demographic information;~~

~~b. A listing of family priorities;~~

~~c. Family resources and concerns; and~~

~~d. Documentation of the transition meeting and outcomes.~~

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

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

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

~~2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 1/2) months for evaluation and First Steps services.~~

~~(b) For all children who are two (2) years and ten and one-half (10 1/2) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.~~

~~(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.~~

~~(16) If the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.~~

~~(17) The POE staff shall maintain a complete record on all children referred through the POE by:~~

~~(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;~~

~~(b) Ensuring that all POE contacts shall be documented in the child's record;~~

~~(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and~~

~~(d) Providing data to the lead agency as requested.~~

~~(18) The POE shall provide a written data report to the DEIC. The POE shall complete the district data report monthly. The information to be included in the report shall be the:~~

~~(a) Number of referrals per quarter;~~

~~(b) Sources of referrals;~~

~~(c) Number of eligible children;~~

~~(d) Eligibility categories and number of children in each catego-~~

~~ry;~~

~~(e) Number of children not eligible;~~

~~(f) Number of children or families refusing services;~~

~~(g) Number of IFSP's completed;~~

~~(h) Number of children who received primary, intensive and tertiary evaluations; and~~

~~(i) Age of each child at the time of referral.~~

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

~~The POE shall:~~

~~(a) Collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community; and~~

~~(b) Send a compiled list of changes to their district technical assistance team quarterly.~~

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

~~(a) Hearing Checklist, 1999; and~~

~~(b) Family Rights Handbook, January 2005.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Fri-day, 8:00 a.m. to 4:30 p.m.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance and requirements for the Point of Entry (POE). The Point of Entry is the local lead agency that is responsible for processing all referrals to the Kentucky Early Intervention System and is responsible for ongoing record keeping and service coordination activities.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators and other POE staff. Service coordination is the one service all eligible children receive. POE agencies house all service coordinators, providing not only the work environment but also the supervision of service coordinators. The POE agencies are the local lead agency for the Kentucky Early Intervention System and are the agencies that are monitored by the Department for Public Health.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 (2)-(6) requires that there be an operational early intervention system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this regulation remove obsolete language and procedures. Additional guidance is provided for clarity.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to fully comply with federal regulations found at 34 C.F.R. 303 and so that regulation reflects current practice and program reorganization.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor as required by 34 C.F.R. 303.501. POEs are the state's local lead agency that serves as the entity to carry out all functions related to serving children and families. Current state performance status reflects the lack of clear lines of supervision with service coordination and other service providers. Program reorganization was implemented to address these weaknesses and thus, state performance will be enhanced by this streamlined chain of responsibility and supervision. Also, regulations will now reflect the current practices and tools (such as the online data/child's record system) thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including POE staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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 early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars. Program reorganization moved service coordination to a fixed-cost which will result in approximately $1-2 million dollar savings to the state. Changes to assessment represent an elimination of unnecessary and costly requirements, resulting in additional cost reductions to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. The level of responsibility and authority of the POE will greatly affect performance improvement and compliance with federal regulations.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No continuing costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal funds and state general funds will be used to implement

this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have an estimated $1-2 million savings to the program.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 outlines the states requirements for implementing early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.650 to 200.676 charges the Cabinet for Health and Family Services, Department for Public Health to implement early intervention services and comply fully with federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

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

902 KAR 30:120. [~~Kentucky Early Intervention Program~~] Evaluation and eligibility.

RELATES TO: KRS 200.654, 34 C.F.R. 303.11, 303.300, 303.322, 20 U.S.C. 1471-1476

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 200.650-676, 34 C.F.R. 303.322, 20 U.S.C. 1474, 1475(a)(10)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726 reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation,[~~and~~] eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Eligibility. (1) A child shall be eligible for First Steps service if the child:

(a) Is age birth through two (2) years;

(b) Is a resident of Kentucky at the time of referral and resides in Kentucky while receiving early intervention services; and

1. Has a documented established risk condition that has a high probability of resulting in developmental delay, or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral that meets the criteria of subsection (1) of this section.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible when the diagnosis is confirmed by a physician and documented in the medical records provided to the First Steps Program.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment completed by a developmental evaluator using a cabinet-approved criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a developmental evaluator.

(4) Eligibility by developmental delay:

(a) A child meeting the criteria in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development; and

(b) Evidence of falling significantly behind in developmental

norms shall be determined on a norm referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (4)(b) of this section:

1. A more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay may be greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of this alternate testing shall determine the child's eligibility if the standardized scores indicate a delay of greater than two (2) standard deviations.

(5) Eligibility by professional judgment: A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team;

(b) An approved intensive level evaluation team; or

(c) The designated record review team, when reviewing for eligibility.

Section 2. Child Evaluation. (1) A child referred to the First Steps Program who meets the criteria in Section 1(1)(a) and (b) of this administrative regulation shall receive an evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; and

(b) The child does not have an established risk diagnosis.

(2) For a child without an established risk diagnosis, the primary level evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations for the Individual Family Service Plan (IFSP) outcomes.

(3) Primary level evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument. The primary level evaluation shall include:

(a) A medical component completed by a physician or nurse practitioner that includes a:

1. History and physical examination;

2. Hearing and vision screening; and

3. Recent medical evaluation in accordance with the timelines established in Section 2(5) of this administrative regulation.

(b) A developmental component completed by a cabinet-approved primary level evaluator that includes:

1. A review of pertinent health and medical information;

2. Completion of appropriate instrument(s) to determine the child's unique strengths and needs; and

3. A recommendation of eligibility.

(c) Results of the evaluation should be explained to the family.

(d) An evaluation report shall be written in accordance with established timelines and shall be written in clear, concise language that is easily understood by the family.

(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (5) of this section; and

(b) The records contain the developmental evaluation information required by subsection (3)(a) and (b) of this section.

(5) If there is a recent medical or developmental evaluation available, as described in subsection (3)(a) and (b) of this section, it shall be used to determine eligibility if for children:

(a) Under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or

(b) Twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps.

(6) A child referred to First Steps program that was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.

(a) For a child who is less than six (6) months corrected age, the primary evaluation shall be done at an approved Intensive Level Clinic and preferably the approved Neonatal Intensive Care Unit follow-up clinic.

(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.

(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if the child does not meet eligibility guidelines at the primary level, but the primary level evaluator and a parent or guardian have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

(9) Should the record review team request an Intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:

(a) A board certified medical professional with expertise in early childhood development;

(b) A board certified developmental pediatrician;

(c) A pediatrician who has training and experience in the area of early childhood development;

(d) A board certified pediatric psychiatrist; or

(e) A board certified pediatric neurologist; and

(f) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).

Section 3. Annual Redetermination of Eligibility. (1) Redeterminations of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the result of the most recent semi-annual progress review demonstrates:

(a) An ongoing delay or failure to attain an expected level of development
in one or more developmental areas; and

(b) Continued First Steps services are required in order to support continuing developmental progress by consensus of the IFSP team.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) If a person or persons directly involved in conducting the evaluation and assessments are unable to attend an IFSP meeting, arrangements shall be made for their involvement by other

means including participating in a telephone conference call, having a representative attend the meeting, or making pertinent records and reports available at the meeting.

Section 4. Incorporation by Reference. (1) "The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility if:~~

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

~~b. The screen does not indicate a delay, but the family still has concerns; and~~

~~2. The child does not have an established risk condition.~~

~~(b) A child with established risk as listed in Section 2(3)(b) of this administrative regulation shall receive a five (5) area assessment done by a primary level evaluator in lieu of a primary level evaluation. If a child is eligible due to an established risk condition of hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a primary level evaluator.~~

~~(2)(a) A determination of initial eligibility pursuant to Section 2 of this administrative regulation, assessments in the identified area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral.~~

~~(b) If a determination of initial eligibility, assessments and initial IFSP team meeting does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.~~

~~(c) If a family is referred for a determination of initial eligibility and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility.~~

~~(3) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if:~~

~~(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and~~

~~(b) The records contain the developmental evaluation information established in subsection (11)(a) and (b) of this section.~~

~~(4) The primary level evaluation shall be utilized to determine eligibility of children without established risk, developmental status and recommendations for further assessment to determine program planning.~~

~~(a) If there is a previous primary level evaluation available, it shall be used to determine eligibility if:~~

~~1.a. For children under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or~~

~~b. For children twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps; and~~

~~2. There is no additional information or the family has not expressed new concerns that would render the previous evaluation no longer valid.~~

~~(b) If there is a previous primary level evaluation available that was performed within the timeframes established in paragraph (a)1 of this subsection but there are new concerns that render the evaluation no longer valid, the initial service coordinator shall request a new primary level evaluation.~~

~~(c) Primary level evaluations shall provide evaluation in the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas.~~

~~(d) The primary level evaluation shall be provided by:~~

~~1. A physician or nurse practitioner; and~~

~~2. A primary evaluator approved by the cabinet.~~

~~(e) A primary level evaluation shall include:~~

~~1. A medical component completed by a physician or a nurse practitioner that shall include:~~

~~a. A history and physical examination;~~

~~b. A hearing and vision screening; and~~

~~c. A child's medical evaluation that shall be current in accordance with the EPSDT Periodicity Schedule; and~~

~~2. A developmental component completed by a cabinet-approved primary level evaluator that utilizes norm-referenced standardized instruments, the results of which shall:~~

~~a. Include the recommendation of a determination of eligibility or possible referral for a record review; and~~

~~b. Be interpreted to the family prior to the discussion required by subsection (5) of this section.~~

~~(5)(a) Prior to the initial IFSP team meeting, the initial service coordinator shall contact the family and primary level evaluator to discuss the child's eligibility in accordance with subsection (4)(e)2b of this section. If the child is determined eligible, the service coordinator shall:~~

~~1. Make appropriate arrangements to select a primary service coordinator;~~

~~2. Arrange assessments in the areas identified in Section 2(1)(c) of this administrative regulation found to be delayed; and~~

~~3. Assist the family in selecting service providers in accordance with 911 KAR 2:110. If the child is receiving therapeutic services from a provider outside of the First Steps Program, the service coordinator shall:~~

~~a. Invite the current provider to be a part of the IFSP team;~~

~~b. Request that the provider supply the team with his assessment and progress reports; and~~

~~c. If the current provider does not want to participate, have the First Steps provider consult with the current provider if assessing the area being treated by the current provider.~~

~~(b) If the child does not have an established risk condition identified in Section 2(1)(c) of this administrative regulation, and is determined not eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.~~

~~(6) At the initial IFSP team meeting, the IFSP team shall:~~

~~(a) Include the following members at a minimum:~~

~~1. The parent of the child;~~

~~2. Other family members, as requested by the parent, if feasible to do so;~~

~~3. An advocate or person outside of the family, if the family requests that the person participate;~~

~~4. The initial service coordinator;~~

~~5. The primary service coordinator;~~

~~6. A provider who performed an assessment on the child; and~~

~~7. If appropriate, a First Steps provider who shall provide services to the child or family;~~

~~(b) Verify the child's eligibility;~~

~~(c) Review the evaluation information identified in subsection (4) of this section;~~

~~(d) Review the assessment reports in accordance with 911 KAR 2:130;~~

~~(e) Determine the family's outcomes, strategies and activities to meet those outcomes as determined by the family's priorities and concerns; and~~

~~(f) Determine the services the child shall receive in order for the family to learn the strategies and activities identified on the IFSP. This shall include identifying:~~

~~1. The discipline;~~

~~2. The professional, paraprofessional, or both;~~

~~3. The method in which services shall be delivered, such as individual, group, or both;~~

~~4. The payor source for the service; and~~

~~5. The frequency of the service.~~

~~(7)(a) Reevaluations shall be provided if the IFSP team determines a child's eligibility warrants review and the child does not have an established risk condition.~~

~~(b) Primary level reevaluations shall not be used to:~~

~~1. Address concerns that are medical in nature; or~~

~~2. Provide periodic, ongoing follow-up services for post-testing~~

~~or testing for transition.~~

~~(c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:~~

~~1. Continue with the same level of services;~~

~~2. Continue with modified services; or~~

~~3. Transition the child from First Steps services.~~

~~(8) Beginning January 1, 2005, an annual IFSP meeting shall be held in accordance with KRS 200.664(7), to determine continuing program eligibility and the effectiveness of services provided to the child. A delay ranking by developmental domain shall be assigned in the progress review report by each therapeutic interventionist using the delay ranking scale. (9) A review of the child's First Steps record by the Record Review Team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation.~~

~~(a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the Department for Public Health for a record review if:~~

~~1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's developmental status in terms of a child's strengths and areas of need;~~

~~2. A child does not meet eligibility guidelines at the primary level, but an IFSP team member and the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or~~

~~3. The IFSP team requests an intensive level evaluation for the purposes of obtaining a medical diagnosis or to make specific program planning and evaluation recommendations for the individual child.~~

~~(b)1. If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Team, Department for Public Health, at the address indicated by the Department for Public Health:~~

~~a. A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;~~

~~b. Primary level evaluation information specified in subsection (11) of this section;~~

~~c. Available assessment reports required in 911 KAR 2:130;~~

~~d. Available IFSPs and amendments;~~

~~e. Most recent progress reports from the IFSP team members. Reports older than three (3) months shall include an addendum reflecting current progress;~~

~~f. Therapeutic staff notes from the previous two (2) months; and~~

~~g. If requesting a record review for a child who is receiving speech therapy, a hearing evaluation performed by an audiologist within six (6) months of the request.~~

~~2. The service coordinator requesting the record review shall attempt to procure and submit the following information, if available:~~

~~a. Birth records, if neonatal or perinatal complications occurred;~~

~~b. General pediatric records from the primary pediatrician;~~

~~c. Medical records from hospitalizations; and~~

~~d. Records from medical subspecialty consultations, such as neurology, orthopedic, gastroenterology or ophthalmology.~~

~~(c)1. Upon receiving a referral, a Record Review Team shall conduct a record review.~~

~~2. After conducting the record review, Record Review Team shall:~~

~~a. Determine whether there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age;~~

~~b. Determine that the child meets or does not meet the eligibility criteria established in Section 2(1) of this administrative regulation; and~~

~~c. Provide the IFSP team with recommendations for service planning.~~

~~3. If there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall:~~

~~a. Determine if further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs; and~~

~~b. Refer:~~

~~(i) The child for an intensive level evaluation, the third level in the First Steps evaluation system; or~~

~~(ii) The family to local community resources.~~

~~4. If there are not at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall provide the IFSP team with a recommendation for transition planning.~~

~~5. Upon the record review team reviewing the child's record, the team shall provide the family and service coordinator with a letter, within fourteen (14) calendar days of the review, informing them of the information described in this paragraph.~~

~~(d) Intensive level evaluations shall be conducted by one (1) or more of the following as determined by the Department for Public Health approved Record Review Team:~~

~~1. A board certified developmental pediatrician;~~

~~2. A pediatrician who has experience in the area of early childhood development;~~

~~3. A pediatric physiatrist;~~

~~4. A pediatric neurologist;~~

~~5. One (1) or more developmental professionals identified in 911 KAR 2:150, Section 1; or~~

~~6. If an IFSP is currently in place, a developmental professional representing at least one (1) discipline that is currently on the IFSP in addition to a professional whose scope of work addresses additional concerns expressed by the Record Review Team.~~

~~(10) Family rights shall be respected and procedural safeguards followed in providing evaluation services.~~

~~(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.~~

~~(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:~~

~~1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong;~~

~~2. If a child is determined to be eligible, First Steps shall provide, at the parent's request, services that do not require, by statute, proper physical or medical evaluations; and~~

~~3. The initial service coordinator shall explain to the family that refusal due to religious beliefs may result in a denial of services which require a medical assessment on which to base treatment protocols.~~

~~(11) A report shall be written in accordance with the time frames established in paragraph (c)1 of this subsection upon completion of each primary level and intensive level evaluation.~~

~~(a) A report resulting from a primary level evaluation or an intensive level evaluation shall include the following components:~~

~~1. Date of evaluation;~~

~~2. Names of evaluators and those present during the evaluation, professional degree, and discipline;~~

~~3. The setting of the evaluation;~~

~~4. Name and telephone number of the contact person;~~

~~5. Identifying information that includes the:~~

~~a. Child's Central Billing and Information System (CBIS) identification number;~~

~~b. Child's name and address;~~

~~c. Child's chronological age (and gestational age, if prematurely born) at the time of the evaluation;~~

~~d. Health of the child during the evaluation;~~

~~e. Date of birth;~~

~~g. Reason for referral or presenting problems;~~

~~6. Tests administered or evaluation procedures utilized and the purpose of the instrument. One (1) method of evaluation shall not be used, but a combination of tests and methods shall be used;~~

~~7. Test results and interpretation of strengths and needs of the child;~~

~~8.a. Test results reported in standard deviation pursuant to subsection (4)(e)2 of this section; and~~

~~b. A rank on the delay ranking scale for each of the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation;~~

~~9. Factors that may have influenced the test conclusion;~~

~~10. Eligibility;~~

~~11. Developmental status or diagnosis;~~

~~12. Suggestions regarding how services may be provided in a natural environment that address the child's holistic needs based on the evaluation;~~

~~13. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;~~

~~14. A narrative description of the five (5) areas of the child's developmental status;~~

~~15. Social history;~~

~~16. Progress reports, if any, on the submitted information; and~~

~~17. A statement that results of the evaluation were discussed with the child's parent.~~

~~(b) The report required by paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.~~

~~(c)1. The reports and notification of need for further evaluation shall be made available to the current IFSP team and family within fourteen (14) calendar days from the date the evaluator received the complete evaluation referral.~~

~~2. In addition to the requirements established in this section, an intensive level evaluation site shall:~~

~~a. Provide to the Record Review Team a copy of the evaluation report within fourteen (14) calendar days from the date the evaluator received the evaluation referral; and~~

~~b. If an IFSP is currently in place:~~

~~(i) Focus recommendations on areas that are specified on the IFSP as being of concern to the family;~~

~~(ii) Identify strategies and activities that would help achieve the outcomes identified on the IFSP; and~~

~~(iii) Provide suggestions for the discipline most appropriate to transfer the therapeutic skills to the parents.~~

~~3. If it is not possible to provide the report and notification required in this paragraph by the established time frame due to illness of the child or a request by the parent, the delay circumstances shall be documented and the report shall be provided within five (5) calendar days of completing the evaluation.~~

~~Section 2. Eligibility. (1) Except as provided in subsection (2) or (3) of this section, a child shall be eligible for First Steps services if he is:~~

~~(a) Aged birth through two (2) years;~~

~~(b) A resident of Kentucky at the time of referral and while receiving a service;~~

~~(c) Through the evaluation process determined to have fallen significantly behind developmental norms in the following skill areas:~~

~~1. Total cognitive development;~~

~~2. Total communication area through speech and language development, which shall include expressive and receptive;~~

~~3. Total physical development including growth, vision and hearing;~~

~~4. Total social and emotional development; or~~

~~5. Total adaptive skills development; and~~

~~(d) Significantly behind in developmental norms as evidenced by the child's score being:~~

~~1. Two (2) standard deviations below the mean in one (1) skill area; or~~

~~2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.~~

~~(2)(a) If a norm-referenced testing reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (1)(d) of this section, a more in-depth standardized test in that area of development may be administered if the following is evident:~~

~~1. The primary level evaluator, service coordinator or the family has a concern or suspects that the child's delay may be greater than the testing revealed;~~

~~2. A more sensitive norm-referenced test tool may reveal a standardized score which would meet eligibility criteria; and~~

~~3. There is one (1) area of development that is of concern.~~

~~(b) Upon completion of the testing required by paragraph (a) of this subsection, the results and information required by Section 1(9)(b) of this administrative regulation shall be submitted by the service coordinator to the record review team for a determination of eligibility.~~

~~(3) A child shall be eligible for First Steps services if the child:~~

~~(a) Is being cared for by a neonatal follow-up program and its staff determine that the child meets the eligibility requirements established in subsection (1) or (4) of this section; or~~

~~(b) In accordance with KRS 200.654(10)(b), has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):~~

~~Aase-Smith syndrome~~
~~Aase syndrome~~
~~Acrocallosal syndrome~~
~~Acrodysostosis~~
~~Acro-Fronto-Facio-Nasal Dysostosis~~
~~Adrenoleukodystrophy~~
~~Agenesis of the Corpus Callosum~~
~~Agyria~~
~~Aicardi syndrome~~
~~Alexander's Disease~~
~~Alper's syndrome~~
~~Amelia~~
~~Angelman syndrome~~
~~Aniridia~~
~~Anophthalmia/Microphthalmia~~
~~Antley-Bixler syndrome~~
~~Apert syndrome~~
~~Arachnoid cyst with neuro-developmental delay~~
~~Arhinencephaly~~
~~Arthrogryposis~~
~~Ataxia~~
~~Atelosteogenesis~~
~~Autism~~
~~Baller-Gerold syndrome~~
~~Bannayan-Riley-Ruvalcaba syndrome~~
~~Bardet-Biedl syndrome~~
~~Bartsocas-Papas syndrome~~
~~Beals syndrome (congenital contractural arachnodactyly)~~
~~Biotinidase Deficiency~~
~~Bixler syndrome~~
~~Blackfan-Diamond syndrome~~
~~Bobble Head Doll syndrome~~
~~Borjeson-Forssman-Lehmann syndrome~~
~~Brachial Plexopathy~~
~~Brancio-Oto-Renal (BOR) syndrome~~
~~Campomelic Dysplasia~~
~~Canavan Disease~~
~~Carbohydrate Deficient Glycoprotein syndrome~~
~~Cardio-Facio-Cutaneous syndrome~~
~~Carpenter syndrome~~
~~Cataracts - Congenital~~
~~Caudal Dysplasia~~
~~Cerebro-Costo-Mandibular syndrome~~
~~Cerebellar Aplasia/Hypoplasia/Degeneration~~

~~Cerebral Atrophy~~
~~Cerebral Palsy~~
~~Cerebro-oculo-facial-skeletal syndrome~~
~~Charge Association~~
~~Chediak Higashi syndrome~~
~~Chondrodysplasia Punctata~~
~~Christian syndrome~~
~~Chromosome Abnormality~~ ~~a. unbalanced numerical (autosomal)~~ ~~b. numerical trisomy (chromosomes 1-22)~~ ~~c. sex chromosomes XXX; XXXX; XXXXX; XXXY; XXXXY~~
~~CNS Aneurysm with Neuro-Developmental Delay~~
~~CNS Tumor with Neuro Developmental Delay~~
~~Cockayne syndrome~~
~~Coffin Lowry syndrome~~
~~Coffin Siris syndrome~~
~~Cohen syndrome~~
~~Cone Dystrophy~~
~~Congenital Cytomegalovirus~~
~~Congenital Herpes~~
~~Congenital Rubella~~
~~Congenital Syphilis~~
~~Congenital Toxoplasmosis~~
~~Cortical Blindness~~
~~Costello syndrome~~
~~Cri du chat syndrome~~
~~Cryptophthalmos~~
~~Cutis Laxa~~
~~Cytochrome-c Oxidase Deficiency~~
~~Dandy Walker syndrome~~
~~DeBarsy syndrome~~
~~DeBuquois syndrome~~
~~Dejerine-Sottas syndrome~~
~~DeLange syndrome~~
~~DeSanctis-Cacchione syndrome~~
~~Diastrophic Dysplasia~~
~~DiGeorge syndrome (22q11.2 deletion)~~
~~Distal Arthrogryrosis~~
~~Donohue syndrome~~
~~Down syndrome~~
~~Dubowitz syndrome~~
~~Dyggve Melchor-Clausen syndrome~~
~~Dyssegmental Dysplasia~~
~~Dystonia~~
~~EEC (Ectrodactyly-ectodermal dysplasia-clefting) syndrome~~
~~Encephalocele~~
~~Encephalo-Cranio-Cutaneous syndrome~~
~~Encephalomalacia~~
~~Exencephaly~~
~~Facio-Auriculo-Radial dysplasia~~
~~Facio-Cardio-Renal (Eastman-Bixler) syndrome~~
~~Familial Dysautonomia (Riley-Day syndrome)~~
~~Fanconi Anemia~~
~~Farber syndrome~~
~~Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)~~

~~Femoral Hypoplasia~~
~~Fetal Alcohol syndrome/Effects~~
~~Fetal Dyskinesia~~
~~Fetal Hydantoin syndrome~~
~~Fetal Valproate syndrome~~
~~Fetal Varicella syndrome~~
~~FG syndrome~~
~~Fibrochondrogenesis~~
~~Floating Harbor syndrome~~
~~Fragile X syndrome~~
~~Fretman-Sheldon (Whistling Facies) syndrome~~
~~Fryns syndrome~~
~~Fucosidosis~~
~~Glaucoma - Congenital~~
~~Glutaric Aciduria Type I and II~~
~~Glycogen Storage Disease~~
~~Goldberg-Shprintzen syndrome~~
~~Grebe syndrome~~
~~Hallermann-Streiff syndrome~~
~~Hays-Wells syndrome~~
~~Head Trauma with Neurological Sequelae/Developmental Delay~~
~~Hearing Loss (30dB or greater in better ear as determined by ABR audiometry or audiometric behavioral measurements)~~
~~Hemimegalencephaly~~
~~Hemiplegia/Hemiparesis~~
~~Hemorrhage Intraventricular Grade III, IV~~
~~Hereditary Sensory & Autonomic Neuropathy~~
~~Hereditary Sensory Motor Neuropathy (Charcot-Marie-Tooth Disease)~~
~~Herrmann syndrome~~
~~Heterotopias~~
~~Holoprosencephaly (Aprosencephaly~~
~~Holt-Oram syndrome~~
~~Homocystinuria~~
~~Hunter syndrome (MPSII)~~
~~Huntington Disease~~
~~Hurler syndrome (MPSI)~~
~~Hyalanosis~~
~~Hydranencephaly~~
~~Hydrocephalus~~
~~Hyperpipecolic Acidema~~
~~Hypomelanosis of ITO~~
~~Hypophosphotasia-Infantile~~
~~Hypoxic Ischemic encephalopathy~~
~~I-Cell (mucolpidosis II) Disease~~
~~Incontinentia Pigmenti~~
~~Infantile spasms~~
~~Ininencephaly~~
~~Isovaleric Acidemia~~
~~Jarcho-Levin syndrome~~
~~Jervell syndrome~~
~~Johanson-Blizzard syndrome~~
~~Joubert syndrome~~
~~Kabuki syndrome~~
~~KBG syndrome~~

~~Kenny-Caffey syndrome~~
~~Klee Blattschadel~~
~~Klippel-Feil Sequence~~
~~Landau-Kleffner syndrome~~
~~Lange-Nielsen syndrome~~
~~Langer Giedion syndrome~~
~~Larsen syndrome~~
~~Laurin-Sandrow syndrome~~
~~Leber's Amaurosis~~
~~Legal blindness (bilateral visual acuity of 20/200 or worse corrected vision in better eye)~~
~~Leigh Disease~~
~~Lennox-Gastaut syndrome~~
~~Lenz Majewski syndrome~~
~~Lenz Microophthalmia syndrome~~
~~Levy-Hollister (LADD) syndrome~~
~~Lesch-Nyhan syndrome~~
~~Leukodystrophy~~
~~Lissencephaly~~
~~Lowe syndrome~~
~~Lowry-Maclean syndrome~~
~~Maffucci syndrome~~
~~Mannosidosis~~
~~Maple Syrup Urine Disease~~
~~Marden Walker syndrome~~
~~Marshall syndrome~~
~~Marshall-Smith syndrome~~
~~Maroteaux-Lamy syndrome (MPS VI)~~
~~Maternal PKU Effects~~
~~Megalencephaly~~
~~MELAS~~
~~Meningocele (cervical)~~
~~MERRF~~
~~Metachromatic Leukodystrophy~~
~~Metatropic Dysplasia~~
~~Methylmalonic Acidemia~~
~~Microcephaly~~
~~Microtia-Bilateral~~
~~Midas syndrome~~
~~Miller (postaxial acrofacial-Dysostosis) syndrome~~
~~Miller-Dieker syndrome~~
~~Mitochondrial Disorder~~
~~Moebius syndrome~~
~~Morquio syndrome (MPS IV)~~
~~Moya-Moya Disease~~
~~Mucolipidosis II, III~~
~~Multiple congenital anomalies (major organ birth defects)~~
~~Multiple Pterygium syndrome~~
~~Muscular Dystrophy~~
~~Myasthenia Gravis - Congenital~~
~~Myelocystocele~~
~~Myopathy - Congenital~~
~~Myotonic Dystrophy~~
~~Nager (Acrofacial Dysostosis) syndrome~~
~~Nance Horan syndrome~~

~~NARP~~
~~Neonatal Meningitis/Encephalitis~~
~~Neuronal Ceroid Lipofuscinoses~~
~~Neuronal Migration Disorder~~
~~Nonketotic Hyperglycinemia~~
~~Noonan syndrome~~
~~Ocular Albinism~~
~~Oculocerebrocutaneous syndrome~~
~~Oculo-Cutaneous Albinism~~
~~Optic Atrophy~~
~~Optic Nerve Hypoplasia~~
~~Oral-Facial-Digital syndrome Type I-VII~~
~~Osteogenesis Imperfecta Type III-IV~~
~~Osteopetrosis (Autosomal Recessive)~~
~~Oto-Palato-Digital Syndrome Type I-II~~
~~Pachygyria~~
~~Pallister Mosaic syndrome~~
~~Pallister-Hall syndrome~~
~~Pelizaeus-Merzbacher Disease~~
~~Pendred's syndrome~~
~~Periventricular Leukomalacia~~
~~Pervasive Developmental Disorder~~
~~Peters Anomaly~~
~~Phocomelia~~
~~Pierre Robin Sequence~~
~~Poland Sequence~~
~~Polymicrogyria~~
~~Popliteal Pterygium syndrome~~
~~Porencephaly~~
~~Prader-Willi syndrome~~
~~Progeria~~
~~Propionic Acidema~~
~~Proteus syndrome~~
~~Pyruvate carboxylase Deficiency~~
~~Pyruvate Dehydrogenase Deficiency~~
~~Radial Aplasia/Hypoplasia~~
~~Refsum Disease~~
~~Retinoblastoma~~
~~Retinoic Acid Embryopathy~~
~~Retinopathy of Prematurity Stages III, IV~~
~~Rett syndrome~~
~~Rickets~~
~~Rieger syndrome~~
~~Roberts SC Phocomelia~~
~~Robinow syndrome~~
~~Rubinstein-Taybi syndrome~~
~~Sanfilippo syndrome (MPS III)~~
~~Schinzel-Giedion syndrome~~
~~Schimmelpenning syndrome (Epidermal Nevus syndrome)~~
~~Schizencephaly~~
~~Schwartz-Jampel syndrome~~
~~Seckel syndrome~~
~~Septo-Optic Dysplasia~~
~~Shaken Baby syndrome~~

~~Short syndrome~~
~~Sialidosis~~
~~Simpson-Golabi-Behmel syndrome~~
~~Sly syndrome (MPS VII)~~
~~Smith-Fineman-Myers syndrome~~
~~Smith-Limitz-Opitz syndrome~~
~~Smith-Magenis syndrome~~
~~Sotos syndrome~~
~~Spina Bifida (Meningomyelocele)~~
~~Spinal Muscular Atrophy~~
~~Spondyloepiphyseal Dysplasia Congenita~~
~~Spondylometaphyseal Dysplasia~~
~~Stroke~~
~~Sturge-Weber syndrome~~
~~TAR (Thrombocytopenia-Absent Radii syndrome)~~
~~Thanatophoric Dysplasia~~
~~Tibial Aplasia (Hypoplasia)~~
~~Toriello-Carey syndrome~~
~~Townes-Brocks syndrome~~
~~Treacher-Collins syndrome~~
~~Trisomy 13~~
~~Trisomy 18~~
~~Tuberous Sclerosis~~
~~Urea Cycle Defect~~
~~Velocardiofacial syndrome (22q11.2 deletion)~~
~~Wildervanck syndrome~~
~~Walker-Warburg syndrome~~
~~Weaver syndrome~~
~~Wiedemann-Rautenstrauch syndrome~~
~~Williams syndrome~~
~~Winchester syndrome~~
~~Wolf Hirschhorn syndrome~~
~~Yunis-Varon syndrome~~
~~Zellweger syndrome~~

~~(4) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the results of the semiannual progress review:~~

~~(a) Meet the initial eligibility requirements of subsections (1) to (3) of this section; or~~

~~(b) Indicate a continued delay on the semiannual progress review's delay ranking scale.~~

~~(5) If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:~~

~~(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth. The evaluator shall ensure that the instrument being used allows for the adjustment for prematurity. If it does not, another instrument shall be used.~~

~~(b) Correction for prematurity shall not be appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.~~

~~(c) Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.~~

~~(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.~~

~~Section 3. Incorporation by Reference. (1) The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule, August 2003 edition, is incorporated by reference.~~

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides requirements to establish eligibility for the Kentucky Early Intervention System. Requirements for child evaluation are also included in this regulation.

(b) The necessity of this administrative regulation: States must establish the specific detail for eligibility to receive early intervention services. While federal statute and regulation describe the mandatory populations of infants and toddlers to be served under Part C of the Individuals with Disabilities Education Improvement Act (Pub.L. 108-446), states set the specific procedures and criteria for eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650-200.676 requires the state to develop and implement a comprehensive, statewide early intervention system that complies with federal statute and regulation. KRS 200.652(2) specifically requires the state to provide assistance and support to the family of an infant or toddler with a disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides specific guidance for evaluation and assessment, reflecting current program structure and best practices in the field of early intervention. It also removes obsolete and redundant language. Required federal regulatory language is also added to the administrative regulation. The listing of eligible medical conditions is updated. Criteria for eligibility by developmental delay is unchanged.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reduce costs for unnecessary evaluations and assessments and to specify procedures for federal requirements for reporting the entry and exit status of all children served by Part C of Pub.L. 108-446. (Federal

requirement is found at 34 C.F.R. 303.540.) The amendments reflect implementation and use of the online data/child record system and reorganization of the Point of Entry system.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statute: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for evaluation and assessment will allow the state regulations to align with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 200 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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 early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately $40 million. The revisions to this administrative regulation will not cost the affected entities any additional dollars. Changes to evaluation and assessment represent an elimination of unnecessary and duplicative testing, resulting in efficiencies to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinator by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation:
Federal funds (12%) and 88% state general funds will be used to implement this administrative regulation. No state match is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.320 through 303.323 outlines the states responsibilities in indentifying, evaluating and assessing children potentially eligible to receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.650 charges the Cabinet for Health and Family Services, Department for Public Health to comply with all federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to differentiate the process for eligibility (eligible by developmental delay; eligible by established risk; eligible by informed clinical opinion) Kentucky has streamlined the evaluation and assessment process.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

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

902 KAR 30:130. [~~Kentucky Early Intervention Program~~] Assessment, [~~and~~] service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.322, 303.340-303.346, 20 U.S.C. 1471-1476

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.500, 20 U.S.C. 1476[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions of assessment and the Individualized Family Service Plans used in First Steps, and the provisions for assistive technology[~~Kentucky's Early Intervention Program~~].

Section 1. Assessment. (1) [~~Initial assessment activities for children without established risk conditions shall occur after the establishment of a child's eligibility for First Steps and prior to the initial IFSP in accordance with 911 KAR 2:120, Section 1.~~

~~(a) An initial assessment shall occur within the areas of development that were determined to be below the normal range, a score greater than -1.0, as identified in the primary level evaluation.~~

~~(b) The following shall complete an assessment:~~

~~1. A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern; and~~

~~2. The fewest additional disciplines as needed to assess the other areas identified as delayed.~~

~~(2)~~] Assessment shall be an[~~the~~] on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150[~~911 KAR 2:150~~] throughout the period of a child's eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs;

(b) The services appropriate to meet those needs;

(c) The family's resources, priorities and concerns which shall be:

1. Voluntary on the part of the family;

2. Family-directed; and

3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2)[~~(3)(a)~~] Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations:[~~, which shall:~~

~~a. Take place over several days if possible;~~

~~b. Occur in natural settings;~~

~~c. Include play and functional activities of the child's day; and~~

~~d. Be recorded in a factual manner;~~]

2. Interview and parent reports; and[~~, which shall:~~

~~a. Involve the use of open-ended questioning after the assessor establishes rapport;~~

~~b. Be provided by parents and other primary caregivers; and~~

~~c. Include the effect and impact of the child's disability on participation in natural environments; and~~]

3. Behavioral checklist and inventories[~~, which shall:~~

~~a. Be completed by caregivers by mail, phone or through face-to-face interview; and~~

~~b. Allow for comparison across settings~~].

(b) Direct assessment shall include one (1) or more instruments that are:

1.[~~That are~~] Appropriate for an infant or toddler and allow[~~that allows~~] for adaptations for a disability as needed; and

2. [~~That are~~] Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(3)[~~(4)~~] If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team reasons for an additional[~~parent has a documented concern that would necessitate another~~] assessment;

(b) Whether[~~Why there is not~~] a current provider on the IFSP team [~~that~~] can assess the area or areas of concern; and

(c) Circumstances relating to[~~What has changed in~~] the child's ability or the family's capacity to address the[~~their~~] child's developmental needs that[~~to~~] warrant the subsequent assessment.

(4)[~~(5)~~] A service coordinator shall obtain a physician's or Advanced Practice Registered Nurse (APRN's)[~~ARNP's~~] written approval[~~consent~~] in order to complete an assessment on a child deemed medically fragile. The approval[~~consent~~] shall be specific as to the modifications needed to accommodate the child's medical status[~~skill areas that may be assessed~~].

(5) A formal, direct assessment shall include a written report when performed for initial assessment, the annual assessment, exit progress monitoring, or when authorized by the IFSP in accordance with Section 1(3) of this administrative regulation. This report shall include:[~~(6) An assessment shall have a written report that shall include:~~]

(a) A description of the assessment instruments used in accordance with subsection (2)[~~(3)~~](b) of this section;

(b) A description of the assessment activities and the information obtained, including information gathered from the family;

(c) The child's First Steps identification number;[~~Identifying information, including:~~

~~1. The central billing and information identification number;~~]

2. [~~The child's Social Security number, if available;~~

~~3.~~] The name of the child;

3.[~~4.~~] The child's age at the date of the assessment;

4.[~~5.~~] The name of the service provider and discipline;

5.[~~6.~~] The date of the assessment;

6.[~~7.~~] The setting of the assessment;

7.[~~8.~~] The state of health of the child during the assessment;

8.[~~9.~~] The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9.[~~10.~~] The medical diagnosis if the child has an established risk condition;

10.[~~11.~~] The formal and informal instruments and assessment methods and activities used; and

11.[~~12.~~] Who was present for the assessment.[~~; and~~

~~13. The signature of the assessor;~~]

(d) A profile of the child's level of performance, in a narrative form which shall indicate:

1. Concerns and priorities;

2. Child's unique strengths, needs, and preferences;

3. Skills achieved since last report, if applicable;

4. Current and emerging skills, including skills performed independently and with assistance; and

5. Recommended direction for[~~of~~] future service delivery; and

(e) Recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information, the evaluation, and the assessment.

(6) A copy of the cabinet-approved criterion referenced assessment protocol shall be submitted electronically to the data collection site designated by the state lead agency within ten (10) working days of the completion of the assessment.[~~Suggestions for strategies, materials, settings, equipment or adaptations that shall support the child's development in natural environments; and~~

~~(f) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.~~]

(7)(a) The initial and other formal assessments, with written reports,[~~assessment, other formal assessments and their resulting report~~] shall be completed and recorded in the child's record on the online data management system[~~sent to the service coordinator~~] within ten (10) working days of the provider receiving the [~~complete written assessment~~] referral from the POE staff[~~service coordinator. The complete assessment referral request shall include:~~

~~1. The point of entry's intake and child history documentation;~~

~~2. The primary level evaluation report;~~

~~3. The current IFSP; and~~

~~4. Authorizing CBIS billing forms~~].

(b) The provider who performed the assessment shall:

1. Verbally share the assessment report with the family and

shall document the contact in the assessor's notes;

2. Provide the written report to the family and the service coordinator within the time frame established in paragraph (a) of this subsection; and

3. Write the report in family-appropriate language that the child's family can easily understand.

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in his staff notes with supportive documentation made in the child's record by the service coordinator, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment.

(8)(a)[~~ Information gathered in the assessment shall be used to determine the service decisions included in the IFSP.~~

~~(9)(a) A child enrolled in First Steps shall receive an assessment as an integral part of service delivery.~~

~~(b) Assessment shall be ongoing in the First Steps Program to ensure concerns and strategies are focused to meet the child and family's current needs.~~] An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered early[~~therapeutic~~] intervention, not an assessment.

(b)[~~(c)~~] Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(9)[~~(10)~~] Ten (10) calendar days prior to either the [~~earlier of~~] the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports to the primary service coordinator and family.

(10)(a) Within 120 days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) The assessment used for annual redetermination of eligibility may be used to meet this requirement as long as it is completed within 120 days prior to the child's exit from the First Steps Program.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract between[~~with~~] the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(2) The [~~First Steps~~] IFSP [~~Form~~] shall be [~~used to record the IFSP. Items on the IFSP form shall be~~] completed according to instructions and[~~as instructed on the form. The accompanying initial IFSP documentation~~] shall include:

(a) Appropriate evaluation and assessment reports in accordance with 902 KAR 30:120, Section 2[~~911 KAR 2:120, Section 1 and assessments reports in accordance with this section~~];

(b) A statement of the specific early intervention services, founded on scientifically based research to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes identified, including the frequency, intensity, and method of delivering the services;[~~Identification of covered services and early intervention approaches;~~]

(c) Service delivery settings; and

(d) A list of IFSP team members and how they participated in the meeting[~~Signed approval by the IFSP team that shall include all individuals identified in the responsible party column of the IFSP including each parent or guardian present~~].

(3)(a) [~~With the exception of a situation established in paragraphs (b) or (c) of this subsection,~~] An authorized IFSP shall be valid for a period not to exceed six (6) months [~~in length~~]. An amendment that occurs to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(4) If the family or service provider is unable to keep the scheduled appointment due to illness or any other reason, the service provider shall document the circumstances in staff notes.

(5)[~~If an IFSP is expected to expire within twenty-one (21) calendar days of a child turning age three (3), an extension of the current IFSP shall be granted if the service coordinator provides the payment authorization coordinator at the Department for Public Health office with the following information:~~

~~1. A copy of the transition plan developed at the transition conference held at least ninety (90) calendar days prior to the child turning three (3);~~

~~2. A list of who attended the transition conference;~~

~~3. A copy of the IFSP that is expiring or has expired; and~~

~~4. A letter indicating that the:~~

~~a. IFSP team agrees with the decision to extend the IFSP; and~~

~~b. Parents are aware that they have the option of:~~

~~(i) Having an IFSP team meeting; or~~

~~(ii) Waiving their right to meet as an IFSP team.~~

~~(c) If an IFSP team meeting cannot be scheduled and convened prior to the current IFSP expiring, an extension may be authorized if the service coordinator provides the following information to the Department for Public Health office:~~

~~1. A letter requesting an extension of the current IFSP, including the dates the extension is to cover;~~

~~2. A detailed description of attempts made to hold an IFSP meeting and the reasons why the meeting cannot be held prior to the expiration of the current IFSP;~~

~~3. The scheduled date that the next IFSP meeting shall take place;~~

~~4. A copy of the current IFSP that has expired or is expiring, with amendments; and~~

~~5. Copies of the current progress reports from the IFSP team.~~

~~(d) If a family chooses not to receive a service included on the IFSP, for reasons such as illness or an inability to keep an appointment, the service provider shall document the circumstances in his staff notes.~~

~~(4)~~] The following shall be adhered to in the development and implementation of the IFSP. IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services[~~intervention's involvement in their lives~~];

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Ensure that First Steps services are flexible, accessible, founded on scientifically based research to the extent practicable, and are necessary to meet the unique needs of the child and family to achieve the outcomes identified, including the frequency, intensity, and method of delivery of the services [~~and responsive to family-identified needs~~]; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible; [~~and~~]

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting[~~atmosphere~~] which includes children without disabilities.

(6)[~~(5)(a)~~] For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120[~~911 KAR 2:120~~], a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(7)[~~(b) If the initial IFSP meeting does not occur within forty-five (45) days due to illness of the child or approval to delay by the parent, the delay circumstances shall be documented on the IFSP.~~

~~(6)~~] The IFSP shall be reviewed [~~for a child and the child's family~~] by convening a [~~face-to-face~~] meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently

if:

(a) The family and[~~or~~] a team member requests a periodic IFSP review meeting;

(b) An early[~~A therapeutic~~] intervention service is added or increased.

(8)[~~(7)(a) The service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining that approval on the IFSP. The team members shall document the contact and approval in their staff notes. The contact and approval shall occur if:~~

~~1. A child is discharged from:~~

~~a. A service due to achieving developmental milestones in that area; or~~

~~b. The First Steps Program;~~

~~2. A service provider recommends a decrease in the frequency, intensity or duration of the service provided by that service provider;~~

~~3. The frequency of a service increases but not the number of units, such as changing from once a week for one (1) hour to twice a week for thirty (30) minutes;~~

~~4. A member of the IFSP team determines that an additional assessment is needed;~~

~~5. The family requests transportation services;~~

~~6.a. A service provider is being replaced;~~

~~b. The replacement provider does not change the outcomes identified on the current IFSP; and~~

~~c. The family agrees;~~

~~7. A team member changes provider numbers and the family wishes to retain that team member's services; or~~

~~8. An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes.~~

~~(b) The family shall be given prior written notice of any changes to the IFSP.~~

~~(8) With the approval of the family, the primary service coordinator shall arrange an IFSP conference to discuss the transition of the family from the program. The conference shall be conducted at least ninety (90) days and up to six (6) months before the child's third birthday and shall include:~~

~~(a) The family;~~

~~(b) A representative of the local education agency and representatives of other potential settings;~~

~~(c) The primary service coordinator as a representative of the First Steps Program;~~

~~(d) Others identified by the family; and~~

~~(e) Current service providers.~~

~~(9)~~] The IFSP shall include:

(a)1. A summary of the family rights handbook;

2. A signed statement of assurances by the family; and

3. A statement signed by the parent that complies with KRS 200.664(6);

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;[~~:~~]

2. Cognitive development that includes[~~include~~] skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. [~~These include:~~

~~a. Attachment with caregivers or family members;;~~

~~b. Interactions with nondisabled peers and adults;~~

~~c. Play skills; and~~

~~d. Self-concept development;~~]

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions. [~~that include:~~

~~a. Self-feeding;~~

~~b. Toileting;~~

~~c. Dressing and grooming; and~~

~~d. Meaningful interaction with the environment;~~

~~6. Physical development that shall be documented annually and that shall include:~~

~~a. Vision;~~

~~b. Hearing;~~

~~c. Health status; and~~

~~d. If present, the established risk condition;~~]

(c) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(d) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction and through parent report;

(e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(f)[~~1.~~] A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome [~~and strategy~~] statements shall:

1.[~~a.~~] Be functionally stated;

2.[~~b.~~] Be representative of the family's own priorities;

3.[~~c.~~] Fit naturally into the family's routines or schedules;

4.[~~d.~~] Reflect the use of the family's own resources and social support network; and

5.[~~e.~~] Be flexible to meet the child and family's needs in expanded current and possible future environments; and[~~2. Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family's desired outcome for the child and family.~~

~~a. Typically strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;~~

~~b. Activities shall refer to the routines or regular events that occur in the child's natural environment; and~~

~~c. The strategies and activities area shall include how strategies will be embedded into activities, the criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill;~~]

(g)1. The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Service documentation shall be stated in frequency, intensity, duration, location and method of delivering services, and shall include payment arrangements, if any;

2. [~~A student in a field experience with an approved First Steps provider who provides therapeutic intervention shall complete and sign staff notes and the First Steps provider shall also complete and sign a staff note for each session in which the student facilitates intervention, including a statement in the note that direct one-on-one supervision was provided during the intervention session.~~

~~3.~~] With the exception of group intervention, and unless prior authorization is granted in accordance with 902 KAR 30:200[~~911 KAR 2:200~~], Section 4, based on individual needs of the child, the frequency and intensity for early[~~therapeutic~~] intervention for each child shall not exceed one (1) hour per discipline per week[~~day~~] for the following disciplines:

a. Audiologist;

b. RN or LPN;

c. Nutritionist or dietician;

d. Occupational therapist or occupational therapist assistant;

e. Orientation and mobility specialist;

f. Physician;

g. Physical therapist or physical therapist assistant;

h. Psychologist, psychological practitioner[~~certified psychologist with autonomous functioning~~], psychological associate, family therapist, [~~or~~] licensed social worker, or licensed professional clinical counselor;

i. Speech language pathologist [~~or speech language pathologist assistant~~];

j. Vision specialist including teacher of the visually impaired, optometrist, and ophthalmologist;

k. Teacher of the deaf and hard of hearing; or

l. Developmental interventionist [~~or developmental associate~~];

3.[~~4.~~]a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

b. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment; and

c. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4.[~~5.~~] If the service cannot be provided in a natural environment, the IFSP shall be documented with the reason, including:

a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;

b. How the service is supported by the peer reviewed research;

c. How the service provided in this location or using this approach will support the child's ability to function in his natural environment; and

d. A timeline as to when the service might be expected to be delivered in a natural environment approach.[;]

(h) The projected dates for initiation of the services, and the anticipated length, duration, and frequency of those services;

(i) Other services that the child needs that are not early intervention services, such as medical services or housing for the family., that are not early intervention services. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(j) The name of the [~~primary~~] service coordinator representing [~~chosen to represent~~] the child's or family's needs and the primary service provider. The [~~primary~~] service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 902 KAR 30:110, Section 2[~~911 KAR 2:140, Section 1(6)~~];

(k) Include at least one (1) transition outcome that addresses transition to preschool services to the extent that those are appropriate or to other services that may be available, if appropriate, as a part of every IFSP and is supported by steps that may include:

1. A description of types of information the family might need in relation to future placements;

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting;

4. How and when assistive technology equipment will be returned and how it will be replaced in the next setting if appropriate; and

5. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement.[~~The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate.~~

~~1. With approval of the family, an IFSP transition conference shall occur at least ninety (90) days and up to six (6) months prior to the child's third birthday;~~

~~2. The IFSP transition conference shall involve:~~

~~a. IFSP team members;~~

~~b. Staff from the local public educational agency; and~~

~~c. Other agencies at the family's request that could be potential service agencies after the child turns three (3); and~~

~~3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. The service coordinator shall chair this meeting; and~~]

(l) Documentation substantiating the following if the child is being provided group intervention:

1. If the child is enrolled in day care or attending a group during normal routines, why the early[~~therapeutic~~] intervention cannot be provided in the child's current group setting; and

2. Early[~~Therapeutic~~] intervention during group shall be directly related to the child's individualized strategies and activities as identified on the IFSP.

(9)[~~(10)~~] If the IFSP team determines that an early[~~a therapeutic~~] intervention service shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:

(a) Which disciplines are providing the therapy using this approach;

(b) Evidence of transdisciplinary planning and practice, including documentation of how role-release is occurring;

(c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;

(d) That the service is individualized to the particular family and child's needs; and

(e) If more than one (1) provider is present and providing early[~~therapeutic~~] intervention services at the same time using a co-treatment approach:

1. Why this approach is being used;

2. The outcomes and activities;

3. Who is performing what activities; and

4. That the service providers involved are providing or learning about the early[~~therapeutic~~] intervention at the same time.

(10)[~~(11)~~] The family shall be encouraged to discuss their child's activities, strengths, and likes and dislikes[~~,~~] exhibited at home.

(11)[~~(12)~~] The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(12)[~~(13)~~] Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(13)[~~(14)~~] The families may agree, disagree, or refute the assessment information.

(14)[~~(15)~~] The family interpretation and perception of the assessment results shall be ascertained and the family's wishes and desires shall be documented as appropriate.

(15)[~~(16)~~] If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team considers the recommendation, determines[~~verifies~~] that it relates to a chosen outcome, and family priority, and agrees that it is a necessary service[~~to it~~].

Section 3. Assistive Technology. (1) The cost of an assistive technology device shall be reimbursed if the device is approved by the Part C Coordinator.

(2) To access assistive technology service and devices, the child shall:

(a) Be eligible for First Steps;

(b) Have a need for assistive technology devices and services documented by appropriate assessment procedures; and

(c) Have a need for and use of assistive technology devices and services documented in the IFSP.

(3) The First Steps assistive technology review process shall be utilized for the following:

(a) All equipment requests which exceed $100; and

(b) All equipment that is deemed questionable by the service coordinator or other POE staff, state lead agency staff, or cannot be determined by the IFSP team as appropriate.

(4) Request will be processed within ten (10) days of receipt of required information. The required information includes:

(a) A current IFSP;

(b) Assessments with recommendations;

(c) Justification statement of specific devices based on needs;

(d) Information regarding equipment or device request; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(5) The decision made through the review process may be appealed to the Part C Coordinator who shall:

(a) Consult with the monitoring committee; and

(b) Issue the final decision.

(6) The decision of the Part C Coordinator may be appealed pursuant to 902 KAR 30:180.

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

(a) The "IFSP Extension Request form RF 11", May 2010 edition; and

(b) The "IFSP Extension Request form RF 11A", May 2010 edition.[~~The First Steps Individualized Family Service Plan (IFSP), January 2005, is incorporated by reference.~~]

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for assessment, service planning and assistive technology within the Kentucky Early Intervention System.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators, primary level evaluation providers, intensive level evaluation teams and other service providers on assessments, service planning and assistive technology. Assessment is service that all children in the Kentucky Early Intervention System receive and provides the foundational information to develop service plans. As a critical feature of the early intervention system, guidance is required to ensure quality assessments that meet the federal requirements as well as being sources of useful information for practitioners and families. Federal requirements for assessment are found at 34 C.F.R. 303.322(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal statute and regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation add guidance and clarity to assessment, service planning and assistive technology conducted by the Individual Family Service Plan teams. Language consistent with applicable federal regulations and statute is added. Obsolete language is removed and some detail was removed. Guidance in the form of timelines and responsibilities of early intervention providers is also added to the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation add guidance and clarity to assessment, service planning and assistive technology conducted by the Individual Family Service Plan teams. Language consistent with applicable federal regulations and statute is added to ensure compliance with federal regulation. Some language is removed that is more appropriate for policy and procedure documents. Obsolete language is removed so that the regulation reflects current program structure and practice. The disciplines that use assistive technology in their practices (speech language pathologists, physical therapists, and occupational therapists) will benefit from the clarity and guidance the regulation provides.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 (6) and KRS 200.652 (3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for the IFSP will bring IFSPs into alignment with federal regulations. Also, regulations will now reflect the current practices and tools (such as the online data/child's record system) thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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 early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be associated with the amendment to this administrative regulation.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services. This increased knowledge of the early intervention system may lead to increased supports and progress for their children.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes an fees or directly or indirectly increases any fees: There is

no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will save an estimated $10,000 per year by reducing the number of unnecessary plan revisions and duplicate service assessments.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the states responsibilities in the development and implementation of the Individual Family Service Plan. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health with the development of the IFSP for eligible children.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with the federal statutes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

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

902 KAR 30:150. [~~Kentucky Early Intervention Program~~] Personnel qualifications.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 20.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions for provider[~~of personnel~~] qualifications for the participation in the[~~as they relate to~~] First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll sufficient providers to carry out the early intervention services according to the provision of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications set forth in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall;

(a) Complete and submit an application to the program that shall include:

1. A valid professional license, registration, or certificate;

2. A provider enrollment form;

3. A code of ethical conduct; and

4. An individual provider agreement.

(b) Adhere to the background check policy and submit, prior to final approval:

1. Administrative Office of the Courts, PT 49 Criminal Background Check form; and

2. Central Registry Check form, DPP-156.

(c) Agree to provide service within the individuals or agency's scope of practice and in accordance with First Steps policy and state and federal regulations and laws.

(d) Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application will not be considered complete and will not be processed until all information and any subsequent documentation requested by the program is provided.

(6) The program shall make an enrollment determination within ninety (90) days of receipt of a completed application.

(7) If the applicant is approved for enrollment, the contract shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes. The provider number is a unique identifier and shall not be shared with any other provider.

(8) A provider's participation shall begin and end on the dates specified in the executed contract.

(9) If an agency is the enrolled provider, the agency is responsible for ensuring that all staff providing First Steps services meet the First Steps personnel qualifications.

(10) Provider applications and contracts must be renewed every even-numbered year, and the individual or agency wishing to renew a contract must resubmit the required documentation to continue the contract.

Section 2. Personnel Qualifications. (1) Minimum[~~Minimal~~] qualifications for professionals or disciplines providing services in First Steps shall be:

(a) An audiologist shall have in accordance with KRS 334A.030:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A family therapist shall have in accordance with KRS 335.300:

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have in accordance with KRS 161.028:

1. A bachelor's degree; and

2.a. An interdisciplinary early childhood education (IECE) certificate by the Kentucky Education Professional Standards Board, Division of Certification or be able to obtain a probationary or emergency IECE certificate issued by the Educational Professional Standards Board; or[~~;~~]

b. [~~Be working toward the IECE certificate by:~~

~~(i) Being enrolled in an approved preparation program in IECE at a university or college; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills in the teacher performance standards for IECE as stated in 16 KAR 2:040, Section 9; or~~

~~c. Hold~~] A valid out-of-state certificate for the teacher of children ages' birth to three (3) years with disabilities.

(d) A nurse shall have in accordance with KRS 314.041:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A nutritionist shall have in accordance with KRS 310.031:

1. A master's degree; and

2. A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) A dietitian shall have in accordance with KRS 310.021:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(g) An occupational therapist shall have in accordance with KRS 319A.110:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(h) An orientation and mobility (O and M) specialist shall have in accordance with KRS 161.020 and with the Division of Exceptional Children Services, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M[~~,~~].

(i) A physician shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(j) A physical therapist shall have in accordance with KRS 327.020:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

(k) A psychologist shall have in accordance with KRS 319.032:

1. A doctoral degree; and

2. A license from Kentucky Board of Examiners of Psychology.

(l) A psychological practitioner[~~certified psychologist with autonomous functioning~~] or licensed psychological associate shall have in accordance with KRS 319.056 or 319.064:

1. A master's degree; and

2. A certificate from the Kentucky Board of Examiners of Psychology.

(m) A social worker shall have in accordance with KRS 335.090:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Social Work.

(n) A speech-language pathologist shall have in accordance with KRS 334A.050:

1. A master's degree; and

2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. An interim license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently-enrolled First Steps speech pathology provider.

(o) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:

1. A bachelor's degree; and

2. A certificate for teaching the hard of hearing, deaf, or hearing impaired, or a certificate for teaching the hearing impaired, grades P-12, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A teacher of the visually impaired shall have in accordance with KRS 161.030:

1. A bachelor's degree; and

2. A certificate for teaching of the visually impaired, grades P-12, or a certificate for teaching the partially seeing, blind, or visually impaired, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(q) A licensed professional clinical counselor shall have in accordance with KRS 335.525(1):

1. A master's degree; and

2. A license from the Kentucky Board of Licensure.

(r) An optometrist shall have in accordance with KRS 320.290:

1. A degree from an accredited school or college of optometry; and

2. A license from the Kentucky Board of Licensure.

(s) An ophthalmologist shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree;

2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing [~~early interventions~~] services in First Steps shall be:

(a) A developmental associate shall:

1.a. Have an associate degree in the area of interdisciplinary early childhood education (IECE); and

b.[~~ Have a child development associate certificate for infant and toddlers caregiver or home visitor;~~

~~c. Have a postsecondary vocational education diploma in child development or child care; or~~

~~d. Be employed in the developmental associate role in an approved program by October 1, 1997, and have a high school diploma or GED and be working toward one (1) of the qualifications stated in clauses a, b, or c of this subparagraph by:~~

~~(i) Being enrolled in an approved program granting one (1) of the above stated qualifications; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills necessary to acquire one (1) of the above stated qualifications; and~~

~~2.~~] Be directly[~~indirectly~~] supervised by a developmental interventionist.

(b) [~~A developmental assistant shall:~~

~~1. Have:~~

~~a. A high school diploma; or~~

~~b. A GED; and~~

~~2. Be directly supervised by a developmental interventionist or developmental associate.~~

~~(c)~~] An occupational therapy assistant shall have in accordance with KRS 319A.110:

1. An associate's degree in occupational therapy[~~OTA degree~~]; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(c)[~~(d)~~] A physical therapy assistant shall have in accordance with KRS 327.040(13):

1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.

(d)[~~(e)~~] A licensed practical nurse shall have in accordance with KRS 314.051:

1. A high school diploma or a GED;

2. [~~Have~~] Completed a state approved LPN education program; and

3. A license from the Kentucky Board of Nursing.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be:

(a) A[~~An initial~~] service coordinator shall[~~be approved by the cabinet based on the following qualifications~~]:

1. Meet[~~Meeting~~] minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or

2. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years' experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) [~~A primary service coordinator shall be approved by the cabinet based on the following qualifications:~~

~~1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;~~

~~2. Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or~~

~~3. Having a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:~~

~~a. Communication skills in interviewing, negotiating and mediating, and providing informal support;~~

~~b. Problem-solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;~~

~~c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and~~

~~d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.~~

~~(c)~~] A developmental evaluator shall[~~be approved by the cabinet by~~]:

1. Meet[~~Meeting~~] minimum highest entry-level requirements for one (1) of the professionals delineated in this administrative regulation;

2. Have[~~Having a bachelor's degree in a related field;~~

~~3. Having~~] two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have[~~and 4. Having had~~] one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice, or completing a mentorship during the first year of providing services in First Steps as approved by the cabinet; and

4. Be approved by the cabinet.

(c)[~~(d)~~] An assistive technology specialists shall[~~be approved by the cabinet based on the following qualifications~~]:

1. Meet the[~~Meeting~~] minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have[~~Having~~] extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

3. Meet[~~Meeting~~] the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps; and[~~, and be approved by the cabinet~~].

4. Be approved by the cabinet.

(d)[~~(e)~~] A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

Section 3.[~~2.~~] Field Experiences - Intervention services implemented by a student.

(1) With family consent, a student[~~Students~~] may provide early[~~therapeutic~~] intervention and services under the direct one-to-one supervision of a provider qualified[~~personnel employed~~] in accordance with Section 1 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

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

(a) "Form 6, Provider Enrollment Form", April 2008 edition;

(b) "The Code of Ethical Conduct"; April 2010 edition;

(c) "Form 5A Service Provider Agreement", April 2010 edition;

(d) "Administrative Office of the Courts-RU-004", January 2010 edition; and

(e) "Central Registry Check, DPP-156", December 2005 edition.

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of:

(a) What this administration regulation does: The amendment outlines the process for provider participation the Kentucky Early Intervention Program and defines the minimum qualifications for the certain professionals or disciplines that provide early intervention services. Another change defines the minimum qualifications for the recognized service position of service coordinator and deletes service positions that are no longer a part of the Kentucky early intervention system. The qualifications for developmental

evaluator and assistive technology specialist are also modified.

(b) The necessity of this administrative regulation: 902 KAR 30:050 is necessary to define the professionals or disciplines that may provide early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 requires the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments identify the information required to enroll as a provider in the Kentucky early intervention program and defines the minimum qualifications for some professionals or disciplines that provide early intervention services; adds that a development interventionist may hold the probationary or emergency IECE certificate; adds licensed professional clinical counselor, optometrist, and ophthalmologist as qualified professionals; and changes associate degree for paraprofessionals and type of supervision. The amendment also defines the minimum qualifications for recognized service position of service coordinator and removes qualifications for primary service coordinator. The qualifications for developmental evaluator and assistive technology specialist are also modified.

(b) The necessity of the amendment to this administrative regulation: Information is necessary to outline the provider enrollment process. Certain professional are added as qualified early intervention providers for compliance to federal statute and regulation and to address provider shortages. Modifications for developmental evaluator and assistive technology specialist were change to reflect current practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires that the state be in compliance with federal law and KRS 200.652(3) requires a statewide system of early intervention services. The amendments to the administrative regulations accomplish these two requirements.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice. Individuals who previously performed the duties of Primary Service Coordinators have been hired by Points of Entry provider or enrolled in First Steps as another type of qualified providers or left the early intervention service system for employment in another field. Professionals who practice the discipline of optometry, ophthalmology, counseling as a licensed professional clinical counselor will need to enroll as First Steps providers if they so choose. This enrollment requirement will also affect new developmental interventionists who are currently not in the system. Agencies that employ paraprofessionals to provide early intervention services will need to ensure that the paraprofessional has the required education degree and will need to provide the appropriate type of supervision. Early intervention providers, both those who are agency-based and those who are independently contracted, that provide the services of a developmental evaluator or assistive technology specialist will need to ensure that staff meet the necessary qualifications for the respective service position.

(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 to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Individuals who meet the early intervention provider qualifications are eligible to enroll as a provider for and be paid by the First Steps system.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation

will reduce expenditures by an estimated $50,000 per year.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.168 and 303.169 outline the requirements for a Comprehensive system of personnel development (CSPD) and Personnel standards. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.666 charges the Cabinet for Health and Family Services, Department for Public Health to monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is ensuring that all those interested in becoming early intervention providers and service coordinators meet the highest level of qualifications for their contracted discipline.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

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

902 KAR 30:160. [~~Kentucky Early Intervention Program~~] Covered services.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.650-676

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Section 1. Covered Services. (1) Services shall be covered when included and authorized through parent signature [~~or verified approval~~] on the individual Family Service Plan (IFSP)[~~individual's IFSP~~] developed by an IFSP team which shall include, at a minimum[~~least~~], the family and two (2) professionals as required[~~identified~~] in 902 KAR 30:150[~~911 KAR 2:150~~], Section 2(1)(a)-(s)[~~1(1)(a)-(p)~~], paraprofessionals as identified in 902 KAR 30:150[~~911 KAR 2:150~~], Section 2(2)(a)-(d)[~~1(2)(a)-(f)~~] or service positions as identified in 902 KAR 30:150[~~911 KAR 2:160~~], Section 2(3)(a)-(d)[~~1(3)(a)-(d)~~]:[~~(a) At least two (2) professionals, paraprofessionals, or service positions shall be from separate agencies or represent different approved providers; and~~

~~(b) One (1) discipline shall be a licensed medical professional as identified in 911 KAR 2:200, Section 3(2)(e), with the exception of Section 3(2)(e)13 and 14 of 911 KAR 2:200.~~]

(2) Services covered shall include[~~be~~]:

(a) Service coordination as provided in accordance with 902 KAR 30:110, Section 2[~~911 KAR 2:110 and 911 KAR 2:140~~]:

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(a)[~~those identified in 911 KAR 2:150~~]; and

3. Service coordination shall be provided under the limitations of 902 KAR 30:200, Sections 2(2)(a) and 3(b)[~~911 KAR 2:200, Section 4~~].

(b) Primary evaluation as provided in accordance with 902 KAR 30:120[~~911 KAR 2:120~~]:

1. Primary evaluation shall be considered the first level of a two (2) tier system of evaluation; and

2. Primary evaluation shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(b)[~~those identified in 911 KAR 2:120 and 911 KAR 2:150~~];

(c) Intensive team evaluation as provided in accordance with 902 KAR 30:120, Sections 1(4) and 2(a)(12)[~~911 KAR 2:120~~]:

1. Intensive team evaluation shall be considered the second level of a two (2) tier system of evaluation;

2. Intensive team evaluation shall be provided by qualified professionals in accordance with 902 KAR 30:120, Section 2(a) those identified in 911 KAR 2:120 and 911 KAR 2:150;

(d) Assessment of the child[~~Service assessment~~] as provided in accordance with 902 KAR 30:130, Section 1, and 902 KAR 30:200, Section 3(1)[~~911 KAR 2:130~~];

(e) Early[~~Therapeutic~~] intervention.

1. Early[~~Therapeutic~~] intervention, defined as face-to-face intervention with the child and caregivers within the context of the environment, includes three (3) types of service:

a. Individual home or community service[~~services~~] which includes intervention provided [~~to the child~~] by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes) under the limitations of 902 KAR 30:200, Section 3(2)[~~911 KAR 2:200, Section 4~~]; or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professional's[~~professionals~~] office or center site under the limitations of 902 KAR 30:200, Section 3(2)[~~911 KAR 2:200, Section 4~~]; or

c.(i) Group intervention which includes the provision of early intervention services by First Steps qualified personnel in a group, defined as the presence of two (2) or more eligible children, at an early intervention professional's site, office, center, home, or other community-based setting where children under three (3) years of age are typically found.

(ii) The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained.

(iii) Group intervention shall be provided under the limitations of 902 KAR 30:200, Section 3(2)(b)[~~911 KAR 2:200, Section 4~~].

2. Disciplines providing early[~~therapeutic~~] intervention shall be qualified professionals in accordance with 902 KAR 30:150, Section 2(1)(a)-(s), or qualified paraprofessionals in accordance with 902 KAR 30:150, Section 2(2)(a)-(d)[~~911 KAR 2:150,~~] and shall include the following:

a. An audiologist;
b. A family therapist;
c. A developmental interventionist;
d. A developmental associate;
e. A nurse;
f. A LPN;
g. A nutritionist;
h. A dietician;
i. An occupational therapist;
j. An occupational therapy assistant;
k. An orientation and mobility specialist;
l. A physical therapist;
m. A physical therapist assistant;
n. A psychologist;
o. A speech language pathologist;
p. A licensed social worker;
q. A Licensed Professional Counselor (LPCC);
r. A teacher of the visually impaired; or
s. A teacher of the deaf and hard of hearing.[~~a. An audiologist; or~~

~~b. A family therapist; or~~
~~c. A developmental interventionist; or~~
~~d. A developmental associate; or~~
~~e. A developmental assistant; or~~
~~f. A nurse; or~~

~~g. A LPN; or~~
~~h. A health aide; or~~
~~i. A nutritionist; or~~
~~j. A dietician; or~~
~~k. An occupational therapist; or~~
~~l. An occupational therapy assistant; or~~
~~m. An orientation and mobility specialist; or~~
~~n. A physical therapist; or~~
~~o. A physical therapist assistant; or~~
~~p. A psychologist; or~~
~~q. A speech language pathologist; or~~
~~r. A speech language pathologist assistant; or~~
~~s. A licensed social worker; or~~
~~t. A teacher of the visually impaired; or~~
~~u. A teacher of the deaf and hard of hearing;~~]

(f) Integrated disciplines center-based service shall be [~~an intervention~~] provided by an agency that is approved by the Department for Public Health[~~Commission for Children with Special Health Care Needs~~] to be qualified to offer services:

1. By at least three (3) of the following disciplines working together in a group setting who qualify in accordance with 902 KAR 30:150 Section 2(1)(c), (g), (j), (n)[~~911 KAR 2:150~~]:

a. Developmental interventionist [~~or developmental interventionist associate~~]; [~~or~~]

b. Occupational therapist; [~~or~~]

c. Physical therapist; or

d. Speech therapist; and

2. At least[~~Where all~~] three (3) disciplines shall be scheduled and present, except in routine absences due to sickness or other conflicts;

3. The providers[~~disciplines~~] shall give evidence of transdisciplinary planning and practice;

4. If integrated discipline center-based service is[~~Where children have identified~~] in the IFSP [~~multiple disciplines~~], with the majority of the group make-up being children who need three (3) or more disciplines, except when approved by the Department for Public Health[~~Commission for Children with Special Health Care Needs~~]; then

5. [~~Where~~] Each child's record shall have a staff note from each discipline, except a staff note shall not be required from a discipline if[~~for those children where~~] the discipline is not identified in the IFSP as a needed service;

(g) Collateral service as provided in accordance with 902 KAR 30:200, Section 3(4)[~~shall be the provision of consultation and planning directed toward the needs of the child with professionals while attending the IFSP meeting, and consultation by and with the child's physician~~];

(h) Assistive technology in accordance with 902 KAR 30:001[~~911 KAR 2:100~~] and 30:130[~~911 KAR 2:140~~];

(i) Respite shall be a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs under the limitations of 902 KAR 30:200, Section 3(3)[~~911 KAR 2:200, Section 4~~];

(j) Transportation and related cost shall be the costs of travel that are necessary to enable an eligible child to receive early intervention services;

(k) Interpreters shall be used when necessary to assist the family in understanding the purpose of First Steps and the family's procedural safeguards during referral, eligibility determination activities, and IFSP meetings[~~services and procedures and shall be reimbursed when:~~

~~1. The service is identified on the IFSP;~~

~~2. The PSC has identified the vendor and established a link with the billing agent;~~

~~3. The vendor meets the qualifications generally accepted for that role in the community and meets all requirements of the agency who hires the interpreter for that role if an agency is involved.~~

~~(3) Rates for covered services shall be negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010
FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone: (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation describes the services that are provided and paid in the Kentucky Early Intervention system.

(b) The necessity of this administrative regulation: This regulation is necessary to eliminate confusion in the types of services provided and paid by the Kentucky Early Intervention System. The Kentucky Early Intervention System uses multiple funding streams to support the provision of services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652(5) requires the coordination of payment for early intervention services from federal, state, local and private insurance coverage, and the use of sliding fee scales.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(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 changes in this regulation remove redundant and obsolete language. Changes were also made to bring the state regulation into compliance with the federal regulations.

(b) The necessity of the amendment to this administrative regulation: The requirements and intent of the federal statute for state early intervention systems needed clarification. One amendment adds a new discipline as a provider of a covered service to address provider shortages. Other amendments reflect the current practices in the system.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.652(3) and (5) require the state to implement a statewide, comprehensive, interagency system of early intervention and to facilitate payment from multiple funding streams.

(d) How the amendment will assist in the effective administration of the statute: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers will be affected by these regulations. No state or local governments are affected by the 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: Regulated entities will continue to provide early intervention services as they currently practice.

(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 to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for payment of covered services and participation in First Steps.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulations during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the content if the Individual Family Service Plan (IFSP), including the content of the IFSP and responsibility and accountability. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health to develop an Individual Family Service Plan the conforms to the federal requirements for the IFSP.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with federal statutes and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

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

902 KAR 30:180. Procedural safeguards[~~Kentucky Early Intervention Program mediation~~].

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions for procedural safeguards for facilities participating[~~of mediation used~~] in First Steps, Kentucky's Early Intervention System.

Section 1. Parental Rights. (1) Definitions of consent, native language, and personally identifiable information.

(a) Consent means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The parent understands that the granting of consent is voluntary and may be revoked at any time;

(b) Native language, where used in reference to persons with limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible for or participating in First Steps;

(c) Personally identifiable means that information includes:

1. The name of the child, the child's parent, or other family member;

2. The address of the child;

3 A personal identifier, such as the child's or parent's social security number; or

4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(2) In accordance with 34 C.F.R. 300.560 through 300.576, the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect and review

records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(3) Prior written notice;

(a) Prior written notice shall be given to the parents of an eligible child no less than seven (7) days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;

2. The reasons for taking the action;

3. All procedural safeguards that are available to the parent; and

4. The complaint procedures under Part C regulations 34 C.F.R. 303.510-303.512, including a description of how to file a complaint and the required timelines under those procedures.

(c) The written prior notice shall be:

1. Written in language understandable to the general public; and

2. Provided in the native language of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

2. The parent understands the notice; and

3. There is written evidence that the requirements of this paragraph have been met.

(e) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

(4) Parent consent.

(a) Written parental consent must be obtained before:

1. Conducting the initial evaluation and assessment of a child; and

2. Initiating the provision of early intervention services.

(b) If consent is not given, the POE shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and

2. That the child will not receive the evaluation and assessment or services unless consent is given.

(5) The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 2. Representation of Children and Surrogate Parents. (1) Each POE shall ensure that the rights of an eligible child are protected if:

(a) No parent, as defined in 902 KAR 30:100(23), can be identified;

(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The child is a ward of the state under the laws of the state.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

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

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

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

(3) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 902 KAR 30:001(23), shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in 902 KAR 30:001, Section 1(23)(a)-(d) to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4) A POE shall determine whether a child needs a surrogate parent and assign a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part C of IDEA, 34 C.F.R. Part 303, to make decisions about early intervention issues for a child. A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

(a) No individual can be identified as a parent as defined in 902 KAR 30:001(23);

(b) The POE, after reasonable efforts, cannot discover the whereabouts of the parents;

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

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 114311.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, such as:

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

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

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

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. A surrogate:

(a) Shall not be an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in the education or care of the child;

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

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

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

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent may represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) Any other rights established under this administrative regulation.

Section 3. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 34 C.F.R. 303.420.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints;

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;

(d) Mediators shall be trained in First Steps policies and procedures.

(3) The time table for the mediation process shall be:

(a) Within five (5) working days after a request for mediation is made to the department, the appointment of a mediator shall be made;

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision;

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation;

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department;

(4) Mediation resolutions may not conflict with state and federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;

Section 4. Due Process Procedures for Parents and Children. (1) Notice of provider's action shall be provided to the parent or guardian which shall include at least the following:

(a) A description of action by the provider with explanation, including a description of any options the provider considered and the reasons why those options were rejected;

(b) A description of each evaluation procedure, test, record report or other relevant factor the provider used as the basis for the action;

(c) A description of the parent or guardian's right to appeal and of the parent or guardian right to inspect provider records pertaining to the decision which is the subject of the notice of action.

(2) Appeal:

(a) At any time following receipt of a written notification by the provider relating to the identification, evaluation or provision of service to a child or anytime following a refusal by the provider to initiate a change in the identification, evaluation or service provided to a child, a parent or guardian may file an appeal with the Cabinet for Health and Family Services.

(b) Upon receipt of an appeal, the cabinet shall issue within five (5) days a notice of hearing conforming in accordance with KRS Chapter 13B.

(c) An administrative hearing shall be conducted within fifteen (15) days of receipt of an appeal by an impartial hearing officer appointed by the secretary of the cabinet.

(d) The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(e) A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the appellant and the cabinet within ten (10) days of the administrative hearing.

(f) All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

(g) A final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

(h) Any parent involved in an administrative hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

4. Obtain a written or electronic verbatim transcription of the proceeding; and

5. Obtain written findings of fact and decisions.

(i) Any proceeding for implementing the complaint resolution process in Section 3 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

(j) Any party aggrieved by the findings and decision regarding an administrative hearing has the right to bring a civil action in state or federal court under section 639(a)(1) of the Pub.L. 108-446.

(k) During the pendency of any proceeding involving a hearing under Section 4 of this administrative regulation, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

(3) State Complaint Procedures.

(a) The following procedures shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.320 through 303.460. The complaint must include:

1. A statement that the state has violated a requirement or the regulations in this part; and

2. The facts on which the complaint is based.

(b) The alleged violation must have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health unless a longer period is reasonable because:

1. The alleged violation continues for that child or other children; or

2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years before the date on which the complaint is received by the Department for Public Health.

(c) Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

1. Carry out an independent on-site investigation, if the agency determines that such an investigation is necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement the Kentucky Early Intervention System; and

4. Issue a written decision to the complainant that addresses each
allegation in the complaint and contains:

a. Findings of fact and conclusions; and

b. The reasons for the agency's final decision.

5. Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

6. Include procedures for effective implementation of the agency's final decision, if needed, including:

a. Technical assistance activities;

b. Negotiations; and

c. Corrective actions to achieve compliance.

7. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the Department for Public Health must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the sixty (60) calendar-day timeline using the complaint procedures described in this section.

8. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

a. The hearing decision is binding; and

b. The agency must inform the complainant to that effect.

9. A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be

resolved by the Department for Public Health.

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

(a) "RF-1 Statement of Assurances", November 2008;

(b) "RF-4 Refusal of Services", November 2008;

(c) "RF-15 Notice of Action", January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Mediation. (1) Mediation shall be adopted as an option to resolve complaints;~~

~~(2) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;~~

~~(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;~~

~~(4) The time table for the mediation process shall be:~~

~~(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;~~

~~(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;~~

~~(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation.~~

~~(d) At any time during the mediation process, a request for a due process hearing may be initiated;~~

~~(5) Mediation resolutions may not conflict with state or federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;~~

~~(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;~~

~~(7) Mediators shall be trained in First Steps policies and procedures.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedural safeguards required by Part C of the Individuals with Education Act, Pub.L. 108-446, Section 639.

(b) The necessity of this administrative regulation: Procedural safeguards are a required state component under 34 C.F.R. 303.170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a description of the actions and requirements for the agency, early intervention provider and family while implementing procedural safeguards.

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

(a) How the amendment will change the existing administrative regulation: The amendments for this regulation reflect the state agency reorganization and practices in the districts.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to correctly reflect the state agency that is promulgating regulations and to be in compliance with federal statute and regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 to 200.676 requires the cabinet to administer all funds appropriated to implement administrative regulations and promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include: The Cabinet for Health and Family Services (one state agency), 15 points of entry/local lead agencies, 1,500 providers and 6,000 children and their families.

(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 Cabinet for Health and Family Services will need to be prepared to implement mediation and due process if this is requested by a family when trying to resolve conflicts surrounding the early intervention services for their child. The Points of Entry/Local Lead Agencies will need to understand how to protect eligible children's rights and process a request for mediation and due process with the Cabinet. Providers and families will need to know how to request mediation or due process from the Cabinet. All stakeholders will need to learn how to file written complaints.

(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 new costs to implement this regulation. The Cabinet has legal services as part of the administrative structure of the agency.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Families and providers will have rights protected and mediation and/or due process available when needed through the state lead agency.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart E-Procedural Safeguards outlines the states responsibilities in assuring the rights of children and parents who receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.672 charges the Cabinet for Health and Family Services, Department for Public Health to protect the rights of disabled child, parent, or guardian being served by the system.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding procedural safeguards the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

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

902 KAR 30:200. Coverage and payment for [~~Kentucky Early Intervention Program~~] Services.

RELATES TO: 34 C.F.R. 303.520, 303.521, 303.527, 303.528, 20 U.S.C. 1371-1485

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(3), (7), 34 C.F.R. 303.520-303.528, 20 U.S.C. 1476(a)(12), 1478[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an ongoing[~~annual~~] review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30[~~911 KAR Chapter 2~~];

(2)(a) Meet the qualifications for a professional or paraprofessional established in 902 KAR 30:150[~~911 KAR 2:150~~]; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150[~~911 KAR 2:150~~];

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall attend training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;

(4) Agree to provide First Steps services as authorized by[~~according to~~] an individualized family service plan as required in 902 KAR 30:130[~~911 KAR 2:130~~];

(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to ensure[~~insure~~] compliance with 902 KAR Chapter 30[~~911 KAR Chapter 2~~];

(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided.

(1) A charge submitted to the Department for Public Health shall be the provider's usual and customary charge for the same service.

(2) The fixed upper limit for services shall be as follows:

(a) [~~Primary~~] Service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person in the family's life.

1. In the office, the fee shall be sixty-two (62)[~~sixty-one (61)~~] dollars and fifty (50) cents per hour of service.

2. In the home or community site, the fee shall be eighty-five (85)[~~eighty-three (83)~~] dollars per hour of service.

(b) [~~Initial service coordination. Initial service coordination shall~~

~~be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person.~~

~~1. In the office, the fee shall be sixty-eight (68) dollars per hour of service.~~

~~2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of service.~~

~~(c)~~] Primary level evaluation. The developmental component of the primary level evaluation for a child without an established risk [~~condition,~~] shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be $270 per service event.

2. In the home or community site, the fee shall be $270 per service event.

(c)[~~(d)~~] Five (5) Area Assessment. The developmental component of the primary level evaluation for the child with an established risk shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be $175 per service event;

2. In the home or community-based site, the fee shall be $175 per service event.

(d)[~~(e)~~] Record review. A record review shall be provided by a Department for Public Health approved team. The fee shall be $300 per service event.

(e)[~~(f)~~] Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified physician, the fee shall be $1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be $1,100 per service event.

(f) Early[~~3. In the office or center-based site without a board certified physician, the fee shall be $400 per service event.~~

~~4. In the community site without a board certified physician, the fee shall be $400 per service event.~~

~~(g) Therapeutic~~] intervention, service assessment, or collateral services in accordance with Section 3(1), (2), (4) and (5)[~~(3), (4), (6) and (7)~~] of this administrative regulation:

1. For an audiologist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

2. For a family therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) per hour of service.

3. For a licensed psychologist, a psychological practitioner or a licensed professional clinical counselor[~~ or certified psychologist with autonomous functioning~~]:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars[~~$139~~] per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars[~~$203~~] per hour of service.

4. For a certified psychological associate:

a. In the office or center-based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars[~~$104~~] per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars[~~$153~~] per hour of service.

5. For a developmental interventionist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

6. For a developmental associate[~~:a.~~] In a[~~the office or~~] center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention service including cotreatment shall be twenty-four (24)[~~forty-five (45)~~] dollars per hour of service.[~~; or~~

~~b. In the home or community site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be sixty-eight (68) dollars per hour of service.~~]

7. For a registered nurse:

a. In the office or center based site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

8. For a licensed practical nurse:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be twenty-four (24) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be thirty-two (32) dollars per hour of service.

9. For a nutritionist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

10. For a dietitian:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

11. For an occupational therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

12. For an occupational therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars per hour of service.

13. For an orientation and mobility specialist:

a. In the office or center-based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service as-

sessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

14. For a physical therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

15. For a physical therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars per hour of service.

16. For a speech therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

17. For a social worker:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

18. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

19. For a teacher of the visually impaired:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

20. For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early[~~therapeutic~~] intervention.

21. For an assistive technology specialist:

a. In the office or center based site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

22. For an optometrist or ophthalmologist providing collateral service in an office of center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.

(g)[~~(h)~~] Respite shall be seven (7) dollars and sixty (60) cents per hour.

(3)(a) For early[~~therapeutic~~] intervention, service assessment, or collateral services, units shall be determined using the beginning and ending time for a service [~~documented in staff notes~~].

1. Services shall be documented in the First Steps online data management system and shall include a list of all those present during the session, a description of the early intervention service(s) provided, the child's response, and future action to be taken.[~~The staff notes shall include:~~

~~a. The child's name and Central Billing and Information System number;~~

~~b. Time in and time out;~~

~~c. Location;~~

~~d. Method of delivery;~~

~~e. A description of what happened during the session, the child's response, and future action to be taken;~~

~~f. Staff title and signature; and~~

~~g. Date.~~]

2. The hours[~~units~~] shall be computed as follows:

a. Fifteen (15) to twenty-nine (29) minutes is equal to 0.25 hours[~~one (1) unit~~];

b. Thirty (30) to forty-four (44) minutes is equal to 0.50 hours[~~two (2) units~~];

c. Forty-five (45) to fifty-nine (59) minutes is equal to 0.75 hours[~~three (3) units~~]; and

d. Sixty (60) to seventy-four (74) minutes is equal 1.00 hour[~~four (4) units~~].

(b) For service coordination services, hours[~~units~~] shall be determined using the beginning and ending time for a service documented in staff notes in accordance with paragraph (a) of this subsection.

1. The hours[~~units~~] shall be computed as follows:

a. One (1) to twenty-two (22) minutes is equal to 0.25 hours[~~one (1) unit~~];

b. Twenty-three (23) to thirty-seven (37) minutes is equal to 0.50 hours[~~two (2) units~~];

c. Thirty-eight (38) to fifty-two (52) minutes is equal to 0.75 hours[~~three (3) units~~]; and

d. Fifty-three (53) to sixty-seven (67) minutes is equal to 1.00 hour[~~four (4) units~~].

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the total number of hours spent[~~number of units used~~].

(4) A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. No individual provider shall be reimbursed for participation on the intensive evaluation team.

(5) Payment for assistive technology devices shall be made in accordance with procedures[~~those~~] approved by the Department for Public Health.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service shall be thirty-two (32) dollars per child per hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Limitations. (1) [~~For primary service coordination, payment shall be limited to no more than ten (10) hours (or forty (40) units) per child per six (6) month period unless preauthorized by the Department for Public Health. A prior authorization request to exceed service coordination limits shall be sent to the Department for Public Health, in accordance with Section 4 of this administrative regulation.~~

~~(2) For initial service coordination, payment shall be limited to~~

~~no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.~~

~~(3)~~] For service assessment:

(a) Payment shall be limited to no more than two (2) [~~and one-half (2 1/2)~~] hours per child per discipline per assessment unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(b) Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per child, unless additional hours are necessary based on the reasons listed in subsection (c) and documented in accordance with 902 KAR 30:130 Section 1(5)(a),(b),(c) from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation; and[~~.~~]

(c)1. A service assessment payment shall not be made for the provision of routine early[~~therapeutic~~] intervention services by a discipline in the general practice of that discipline.

2. Payment for a [~~unit of~~] service assessment shall be restricted to the need[~~needs~~] for additional testing due to new concerns or significant change in the child's status[~~or other activity by the discipline that go beyond routine practice~~].

3. Routine activity of assessing progress and outcomes shall be billed as early[~~therapeutic~~] intervention.

(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent, and shall not exceed two (2) hours for each event.

(e) Payment for a service assessment of up to two (2) hours for each event for the purpose of the annual and exit progress monitoring five (5) area assessment shall be made to the primary service provider as approved by the IFSP team.

(2)[~~(4)~~] For early[~~therapeutic~~] intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as follows:

(a) For office, center or home and community sites:

1. Payment shall be limited to no more than one (1) hour per day per child per discipline by a:

a. Professional meeting the qualifications established in 911 KAR 2:150; or

b. Paraprofessional meeting the qualifications established in 911 KAR 2:150.

2. Payment shall be limited to no more than twenty-four (24) hours[~~ninety-six (96) units~~] for a single discipline and thirty-six (36) hours[~~144 units~~] for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional forty-eight (48) hours[~~192 units~~] during a six (6) month period..

(b) For group:

1. Children shall not be eligible for both group and individual therapy in the same developmental domain concurrently on the Individualized Family Services Plan.

2. Group providers shall be preapproved by the Department for Public Health.

3. The ratio of staff to children in group early[~~therapeutic~~] intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 902 KAR 30:130, Section 2(6) or (7)[~~911 KAR 2:130, Section 2(6) or (7)~~].

(e) Payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

(3)[~~(5)~~] For respite, payment shall:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(4)[~~(6)~~] For collateral services, payment for collateral services shall be a billable service for First Steps providers, who are providing early intervention services for the eligible child through an IFSP and paid by the First Steps system:

(a) Length of an IFSP meeting shall be limited to no more than one (1) hour[~~four (4) billable units~~];

(b) Attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and primary service provider[~~two (2) professionals or paraprofessionals~~] selected by the IFSP team;

(c) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 902 KAR 30:120, Section 1(4)(e)2b[~~911 KAR 2:120, Section 1(4)(e)2b~~]. Payment shall be at the collateral services rate for the discipline that the evaluator represents; and

(d) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided.

(5)[~~(7)~~] For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(6)[~~(8)~~] Unless prior authorized by the Department for Public Health due to a shortage of direct service providers[~~primary level evaluators~~], a primary level evaluator shall not be eligible to provide early[~~therapeutic~~] intervention to a child whom he evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Authorization[~~Requests~~] for payment for early[~~therapeutic~~] intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the cabinet or its designee[~~Payment Authorization Coordinator~~], as determined by the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 and approved[~~,~~] prior to the service being delivered and shall include the following:

(a) A service exception request completed in the First Steps online data management system;

(b)[~~describing:~~

~~1. Current IFSP team members;~~

~~2. Current services;~~

~~3. Description of current development status;~~

~~4. Family input;~~

~~5. Additional services requested; and~~

~~6. Rationale for the additional services;~~

~~(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e)1, which shall include the following:~~

~~1. History;~~

~~2. Physical exam;~~

~~3. Hearing screening;~~

~~4. Vision screening; and~~

~~5. Other available reports from medical specialists;~~

~~(c) Developmental evaluation reports in accordance with 911 KAR 2:120, Section 1(4)(e)2, which shall include the following:~~

~~1. Primary level evaluation report; and~~

~~2. Intensive level evaluation report, if applicable;~~

~~(d) IFSP team member reports completed within the last twelve (12) months by the disciplines involved, including:~~

~~1. Assessments; and~~

~~2. Six (6) month progress reports;~~

~~(e) IFSP documents from the last twelve (12) months, including amendments;~~

~~(f)~~] Payor of Last Resort Form, along with available supporting documentation, including:

1. Requests submitted to other payors; and

2. Responses from payor sources;

(c)[~~(g)~~] Transfer of Skills Form; and

(d)[~~(h)~~] Service Planning Activity Matrix Form.

(2) [~~Requests for payment for service coordination services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, prior to the service being delivered and shall include:~~

~~(a) A service exception request as required by subsection (1)(a) of this section;~~

~~(b) A copy of the current IFSP; and~~

~~(c) A detailed description of how and if the additional units are to be used.~~

~~(3)~~] If the IFSP team is not in agreement with the decision of the record review team:

(a) A request for further review shall be submitted to the Department for Public Health; and

(b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.

(3)[~~(4)~~] If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:

(a) The child's IFSP team shall be asked to reconvene for a IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and

(b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for services based on a sliding fee scale, except that a charge shall not be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing available sources of funding for early intervention services; and

(b) Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be explained to the family by the service coordinator;

(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time early intervention[~~therapeutic~~] services are authorized, and continuing for the duration of participation in early intervention services, as determined by the:

1. Level of family gross income identified on the last Federal Internal Revenue Service statement or check stubs form the four (4) most recent consecutive pay periods, as reported by the family; and

2. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

a. Below 200 percent of poverty, there shall be no payment;

b. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;

c. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;

d. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;

e. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or

f. From 600 percent of poverty and over, the payment shall be $100 per month of participation;

(c) Not apply to a child receiving Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefits;

(d) Not apply to a family who receives only evaluation, assessment, service coordination services or IFSP development in the initial calendar month of eligibility. The [~~initial~~] service coordinator shall notify the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~] immediately if the initial IFSP date is different than the month that early[~~therapeutic~~] intervention services are started;

(e) Not apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~] in accordance with paragraph (g)1 and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs [~~such~~] as an unexpected hospitalization;

(f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development if the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the Department for Public Health Family Share Administrator[~~financial case manager~~] immediately if this situation exists so that the family is not assessed a family share cost; and

(g) Not prevent a child from receiving services if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

1. The service coordinator shall submit to the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~], on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

2. The family shall undergo a financial review by the Department for Public Health that may:

a.(i) Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities; and

(ii) Result in a calculation of a new family[~~-~~] share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b)2 of this subsection. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family[-] share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.[~~; and~~

~~(h) Not apply to a family who chooses to use their private insurance if the amount of the insurance monies received and applied to the family's services in the calendar year is equal to or greater than the sum of the obligated amount of family share during the same calendar year. Refunding of family share collected up to the amount of the private insurance reimbursement shall occur after the end of a calendar year.~~]

(4) Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income will[~~shall~~] result in a change in the amount of the obligated family share payment. [~~If a change in the family share category occurs, it shall become effective the month following the month the change was reported.~~]

(5) A family that refuses to have its income verified shall be assessed a family share payment of $100 per month of participation.

(6) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(7) If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.

(8) A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(9) With the exception of a discipline identified in 902 KAR 30:130, Section 2(7)(g)2j or k[~~911 KAR 2:130, Section 2(9)(g)3j, k, or l~~], a provider shall bill a third-party insurance, if any, for an early[~~a therapeutic~~] intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted through the First Steps data management system[~~with the First Steps bill~~].

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

(a) "Transfer of Skills Form", November 2008 edition; and

(b) "Service Planning Activity Matrix Form", November 2008

edition.[~~"Technology-assisted Observation and Teaming Support form (TOTS)", November 2008 edition, is incorporated by reference.~~]

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is receive by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rates to be paid to providers for the provision of approved services (i.e. Physical Therapy, Occupational Therapy), sets forth limitations for billable services, and establishes processes for requesting services beyond set parameters and for assessing and collecting family participation payments.

(b) The necessity of this administrative regulation: The First Steps Program operates on a fee-for-service system requiring the establishment of rates for covered services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps Program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: This administrative regulation describes how the rate structure used by the Cabinet for Health and Family Services when contracting with service providers as well as the sliding fee scale.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this administrative regulation provides updated rates for certain providers, requires that early intervention providers be in compliance with regulations and that providers maintain records that can be submitted to the department for monitoring. Rates for specific services are established and/or modified. Obsolete language is removed.

(b) the necessity of the amendment to this administrative regulation: The revisions to this administrative regulation are necessary to establish business rules for providers and establish rates of payments for services rendered. Obsolete language is removed to reflect current program structure and provide clarity.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services. KRS 200.650(6) and KRS 200.652(3) require a statewide comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure appropriate compensation to First Steps service provider and will assure that the Cabinet for Health and Family Services is administering the sliding fee scale in a manner consistent with federal regulation and intent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the 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: Providers of the amended rates will need to adjust their claims to reflect the changes. Licensed Professional Clinical Counselors (LPCC) and optometrists that want to provide service in First Steps will need to enroll.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately $40 million dollars. The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement 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 change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676.

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? There will be no revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.520 through 303.528 outlines the federal policies and procedures related to financial matters. It states that First Steps must be the payor of last resort. It also provides provisions for charging a family participation fee. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.674 charges the Cabinet for Health and Family Services, Department for Public Health in the use of early intervention funds.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation, Kentucky is in full compliance with the federal requirements to ensure First Steps is the payor of last resort for early intervention services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Amendment)

907 KAR 1:012. Inpatient hospital service coverage [~~services~~].

RELATES TO: KRS 205.520, 42 U.S.C. 1395ww

STATUTORY AUTHORITY: KRS 194A.010(1), (2), 194A.030(2), 194A.050, 205.520(3), 42 C.F.R. 440.10, 440.210, 440.220, 42 U.S.C. 1396, a, b, d, r-4, Pub.L. 111-148

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 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to inpatient hospital services for which payment shall be made by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Critical access hospital" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and designated as a critical access hospital by the department.

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

(4)[~~(2)~~] "Emergency" means a condition or situation which requires an emergency service pursuant to 42 C.F.R. 447.53.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; or

(b)1. Which is recognized by the Centers for Medicare and Medicaid Services as a hospital-acquired condition.

(7) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(8)[~~(3)~~] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub.L. 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(10)[~~(4)~~] "Nonemergency" means a condition or situation which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(11) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180.

(12) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240.

Section 2. Prior Authorization. To be covered by the department:

(1) Prior to a nonemergency admission, including an elective admission or a weekend admission the department shall have made a determination that the nonemergency admission was:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and.

(2) Within seventy-two (72) hours after an emergency admission, the department shall have made a determination that the emergency admission was:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

Section 3. Covered Admissions. (1) The department shall reimburse for an admission primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis.

(2) [~~shall be covered.~~

~~(2) An admission relating to only observation or diagnostic purposes shall not be covered.~~

~~(3)~~] Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 4. Noncovered Services. Inpatient hospital services not covered shall include:

(1) The department shall not reimburse an acute care hospital reimbursed via a diagnosis-related group (DRG) methodology, a

critical access hospital, a long-term acute care hospital, a psychiatric hospital, a rehabilitation hospital, or a Medicare-designated psychiatric or rehabilitation distinct part unit for the following:

(a) A service which is not medically necessary including television, telephone, or guest meals;

(b)[(2)] Private duty nursing;

(c)[(3)] Supplies, drugs, appliances, or equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient;

(d)[(4)] A laboratory test not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists;

(e)[(5)] Private accommodations unless medically necessary and so ordered by the attending physician; or

(f)[(6)] The following listed surgical procedures, except if a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

1.[(a)] Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision), or muscle;

2.[(b)] Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts or condylomas, anterior nose bleeds, or cervix;

3.[(c)] Circumcision;

4.[(d)] Dilation: dilation and curettage (diagnostic or therapeutic nonobstetrical); dilation or probing of lacrimal duct;

5.[(e)] Drainage by incision or aspiration: cutaneous, subcutaneous, or joint;

6.[(f)] Pelvic exam under anesthesia;

7.[(g)] Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, or subcutaneous fistulas;

8.[(h)] Extraction: foreign body or teeth;

9.[(i)] Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter);

10.[(j)] Hymenotomy;

11.[(k)] Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure or fractures;

12.[(l)] Meatotomy or urethral dilation, removal calculus and drainage of bladder without incision;

13.[(m)] Myringotomy with or without tubes, otoplasty;

14.[(n)] Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy;

15.[(o)] Removal; IUD, fingernail or toenails;

16.[(p)] Tenotomy hand or foot;

17.[(q)] Vasectomy; or

18.[(r)] Z-plasty for relaxation of scar or contracture.

(g) A service for which Medicare has denied payment;

(h) An admission relating only to observation or diagnostic purposes; or

(i) Cosmetic surgery, except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

(2) The department shall not reimburse an acute care hospital reimbursed via a DRG-methodology pursuant to 907 KAR 1:825 for the following:

(a) Treatment for or related to a hospital-acquired condition;

(b) A never event; or

(c) Treatment related to a never event.

(3) A hospital shall not bill:

(a) A recipient for:

1. Treatment for or related to a hospital-acquired condition;

2. A never event; or

3. Treatment related to a never event;

(b) The Cabinet for Health and Family Services for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Cabinet for Health and Family Services;

2. A never event associated with a child in the custody of the Cabinet for Health and Family Services; or

3. Treatment related to a never event associated with a child in the custody of the Cabinet for Health and Family Services;

(c) The Department for Juvenile Justice for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Department for Juvenile Justice;

2. A never event associated with a child in the custody of the Department for Juvenile Justice; or

3. Treatment related to a never event associated with a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for:

(a) Treatment for or related to a hospital-acquired condition;

(b) A never event; or

(c) Treatment related to a never event.

Section 5. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 6. Incorporation by Reference. (1) The "CMS Manual System Pub.L. 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009, is incorporated by reference.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Hunter or Darlene Burgess

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid inpatient hospital coverage provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Medicaid inpatient hospital service provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1), and 205.520(3) by establishing Kentucky Medicaid inpatient hospital service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1), and 205.520(3) by establishing Kentucky Medicaid inpatient hospital service provisions.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates Medicaid coverage of care related to conditions acquired by patients in a hospital unrelated to the condition for which the patient was admitted to the hospital and care associated with events which never should have happened. The policy only applies to acute care hospitals as the Centers for Medicare and Medicaid Services (CMS) and exempts miscellaneous other hospital types from the policy. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with guidance from the Centers for Medicare and Medicaid Services (CMS). The amendment is also necessary to provide a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem (while in the hospital) unrelated to the patient's admitting problem. Lastly, the policy is not currently mandated by CMS but will be mandated for state Medicaid programs effective July 1, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment, which addresses Medicaid inpatient hospital coverage, conforms with KRS 194A030(2), which establishes the Department for Medicaid Services as the singles state agency authorized to administer Title XIX of the Social Security Act. The amendment also confirms with KRS 194A.050(1) which charges the Cabinet for Health and Family Services secretary to "…adopt...administrative regulations necessary under applicable laws to protect, develop, and maintain the health…of the individual citizens of the Commonwealth…"

(d) How the amendment will assist in the effective administration of the statutes: The amendment is expected to assist in the effective administration of KRS 194A.050(1) by providing a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem (while in the hospital) unrelated to the patient's admitting problem.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to acute care hospitals as the Centers for Medicare and Medicaid Services (CMS) and exempts miscellaneous other hospital types from the policy. Currently these number approximately 65 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. No compliance action is mandated; however, acute care hospitals will not be reimbursed for treatment of a condition a patient acquires, unrelated to their admitting condition, while in the hospital or for care associated with a never event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The Department for Medicaid Services (DMS) hopes that the incidence rate of hospital-acquired conditions and never events will drop as a result of the amendment; thus, benefiting inpatient hospital patients.

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

(a) Initially: As a result of the amendment, DMS will experience minimal administrative cost in the form of Medicaid Management Information System (MMIS) programming changes. Conversely, the Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(b) On a continuing basis: DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(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. The amendment is expected to reduce expenditures.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that long-term acute care hospitals, rehabilitation hospitals, psychiatric hospitals, critical access hospitals and Medicare designated psychiatric or rehabilitation distinct part units are exempt from the hospital-acquired condition and never event policy as the Centers for Medicare and Medicaid Services (CMS) exempts them from the policy.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(1), Pub. L. 111-148 (Section 2702), 42 U.S.C. 1395ww(d)(4)(D), 42 C.F.R. 440.210 and 42 C.F.R. 440.220.

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. State Medicaid programs must provide inpatient hospital services other than in institutions for mental diseases to every covered group of Medicaid beneficiaries. Pub.L. 111-148, Section 2702 states, "(a) IN GENERAL. - The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall identify current State practices that prohibit payment for health care acquired conditions and shall incorporate the practices identified, or elements of such practices, which the Secretary determines appropriate for application to the Medicaid program in regulations. Such regulations shall be effective as of July 1, 2011, and shall prohibit payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations. The regulations shall ensure that the prohibition on payment for health care-acquired conditions shall not result in a loss of access to care or services for Medicaid beneficiaries."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The mandate requires coverage of inpatient hospital services. The amendment regarding hospital-acquired conditions has been mandated to become effective July 1, 2011 and is currently "encouraged" by the Centers for Medicare and Medicaid Services (CMS) via a letter to state Medicaid directors numbered "SMDL 08-004."

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

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 Medicaid Services (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(1), 42 C.F.R. 440.210, and 42 C.F.R. 440.220.

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? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? As a result of the amendment, DMS will experience minimal administrative cost in the form of Medicaid Management Information System (MMIS) programming changes. Conversely, the Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated for subsequent years. DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Amendment)

907 KAR 1:014. Outpatient hospital services.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6310, 205.8453[~~194.050~~]

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 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 the provisions relating to outpatient hospital services for which payment shall be made by the medical assistance program on behalf of the categorically needy and medically needy.

Section 1. Definitions. (1) "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;

5. The Acquired Brain Injury Long Term Care Waiver Program in accordance with 907 KAR 3:210; or

6. The Michelle P. Waiver Program in accordance with 907 KAR 1:835; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

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

(3) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(4) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).

(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.

(6)[~~(5)~~] "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 and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. 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.

(7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.

(8)[~~(6)~~] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9)[~~(7)~~] "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

(10)[~~(8)~~] "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 patient status criteria established in 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.

(11) "Recipient" is defined by KRS 205.8451(9).

(12)[~~(9)~~] "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Coverage Criteria. (1) To be covered by the department:

(a) The following services shall be prior authorized and meet the requirements established in paragraph (b)1, 2, and 3[~~and 2~~] of this subsection:

1. Magnetic resonance imaging (MRI);
2. Magnetic resonance angiogram (MRA);
3. Magnetic resonance spectroscopy;
4. Positron emission tomography (PET);
5. Cineradiography/videoradiography;
6. Xeroradiography;
7. Ultrasound subsequent to second obstetric ultrasound;
8. Myocardial imaging;
9. Cardiac blood pool imaging;
10. Radiopharmaceutical procedures;
11. Gastric restrictive surgery or gastric bypass surgery;
12. A procedure that is commonly performed for cosmetic purposes;
13. A surgical procedure that requires completion of a federal consent form; or
14. An unlisted procedure or service; and

(b) An outpatient hospital service, including those identified in paragraph (a) of this subsection, shall be:

1. Medically necessary; and
2. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.
3. For a lock-in recipient, except for a screening to determine if the lock-in recipient has an emergency medical condition in accordance with Section 3(2) of this administrative regulation, only provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677.

(2) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service;

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(3) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(4) The following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician, or if applicable, a duly-licensed dentist:

(a) A diagnostic service ordered by a physician;

(b) A therapeutic service, except for occupational therapy, ordered by a physician;

(c) An emergency room service provided in an emergency situation as determined by a physician; or

(d) A drug, biological, or injection administered in the outpatient hospital setting.

(5)[~~(4)~~] A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

(6) The department shall cover:

(a) A screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition; or

(b) An emergency service to a lock-in recipient if the department determines that the lock-in recipient had an emergency medical condition when the service was provided.

Section 3. Hospital Outpatient Services Not Covered by the Department. (1) The following services shall not be considered a covered hospital outpatient service:

(a)[~~(1)~~] An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;

(b)[~~(2)~~] A service for which:

1.[~~(a)~~] An individual has no obligation to pay; and

2.[~~(b)~~] No other person has a legal obligation to pay;

(c)[~~(3)~~] A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medical Assistance Program for hospital outpatient services;

(d)[~~(4)~~] A drug, biological, or injection purchased by or dispensed to a patient; or

(e)[~~(5)~~] A routine physical examination.

(f) A nonemergency service, other than a screening in accordance with subsection (2) of this section, provided to a lock-in recipient:

1. In an emergency department of a hospital; or
2. If provided by a hospital that is not the lock-in recipient's designated hospital pursuant to 907 KAR 1:677.

Section 4. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit package;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or
2. Optimum Choices benefit package.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit package;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or
2. Optimum Choices benefit package.

(3) The therapy limits established in subsections (1) and (2) of this section shall be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(a) To request an override:

1. The provider shall telephone or fax the request to the department; and
2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(4) Except for recipients under age twenty-one (21), prior authorization shall be required for each visit that exceeds the limit established in subsections (1) and (2) of this section.

(5) The limits established in subsections (1) and (2) of this section shall not apply to a recipient under twenty-one (21) years of age.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to

attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Hunter, Darlene Burgess, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid outpatient hospital service provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid outpatient hospital service provisions.

(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 Medicaid outpatient hospital service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing Medicaid outpatient hospital service provisions.

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

(a) How the amendment will change this existing administrative regulation: DMS is amending outpatient hospital coverage related to lock-in program recipients. The lock-in program is a Medicaid program to curtail excessive and inappropriate utilization of Medicaid services and is established via 907 KAR 1:677. The amendment establishes that DMS will not reimburse for nonemergency services provided to a lock-in recipient in an emergency department of a hospital or if provided by a hospital that is not the lock-in recipient's designated hospital. Additionally, DMS will reimburse for a screening of a lock-in recipient to determine if the individual has an emergency medical condition and will reimburse for emergency services if the lock-in recipient has an emergency medical condition.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to control excessive Medicaid utilization in accordance with KRS 205.8453 and 205.6310 and to ensure the availability of funding necessary for the continued operation of the Medicaid program; thus, protecting the health, safety, and welfare of Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(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 hospitals providing outpatient services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Outpatient hospitals will have to ensure, when providing care for a lock-in recipient, that they do not provide MRIs, MRAs, PETs, and related to the recipient if they are not the designated hospital for that lock-in recipient.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outpatient hospitals as a whole may benefit in that Medicaid funds which have been expended due to excessive utilization with lock-in recipients will be reduced; thus, preserving Medicaid funds for appropriate utilization and reimbursement.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates minimal administrative costs associated with Medicaid Management Information System (MMIS) programming to implement the amendment initially. DMS anticipates reducing expenditures by approximately $100,000 (federal and state combined) annually by implementing the amendment.

(b) On a continuing basis: DMS does not anticipate subsequent year costs related to the amendment and estimates reducing expenditures by approximately $100,000 (state and federal combined) annually as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds of general and agency 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 amendment, including the amendment after comments, does not establish any fees, nor does it directly or indirectly increase any fees

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment, including the amendment after comments, does not establish or increase any fees.

(9) Tiering: Is tiering applied? Critical access outpatient hospital reimbursement differs from other outpatient hospital reimbursement as critical access hospital reimbursement is established in federal regulation. The amendment is applied to lock-in recipients only as they are recipients which have been identified as excessively or in appropriately utilizing Medicaid services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient hospital services including the county and state owned are affected by this amendment. The Department for Medicaid Services will also be affected by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050, 205.520, 205.560, 205.6310, 205.8453, 42 U.S.C. 1396d(a)(2)(A), 42 C.F.R. 440.20, 42 C.F.R. 440.210, and 42 C.F.R. 440.220.

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 amendment is not expected to generate additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first

year? The Department for Medicaid Services (DMS) anticipates minimal administrative costs associated with Medicaid Management Information System (MMIS) programming to implement the amendment initially. DMS anticipates reducing expenditures by approximately $100,000 (federal and state combined) annually by implementing the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate subsequent year costs related to the amendment and estimates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing this amendment.

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. The amendment is not mandated, but 42 U.S.C. 1396d(a)(2)(A), 42 C.F.R. 440.20, 440.210 and 440.220 address Medicaid outpatient hospital service requirements.

2. State compliance standards. KRS 205.8453 charges the Cabinet for Health and Family Services and the Department for Medicaid Services with instituting "other measures necessary or useful in controlling fraud and abuse." KRS 205.6310 states, "The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency;

(3) Reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;

(4) Except for emergency room services rendered to children under the age of 6, prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency; and

(5) The provisions of this section shall apply to any managed care program for Medicaid recipients."

3. Minimum or uniform standards contained in the federal mandate. Outpatient hospital services are required services for the categorically needy. To the extent that outpatient hospital services constitute ambulatory services as defined in a state Medicaid plan, they also are required if the plan covers the medically needy. Outpatient hospital services are defined as preventive, diagnostic, therapeutic, rehabilitative, or palliative services furnished to outpatients in an institution licensed or formally approved as a hospital by an officially designated authority for state standard setting. The institution must meet requirements for participation in Medicare and Medicaid as a hospital, and services must be furnished under the direction of a physician or a dentist. A state's Medicaid agency may exclude from the definition of outpatient hospital services items and services not generally furnished by most hospitals in the state.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Amendment)

907 KAR 1:015. Payments for outpatient hospital services.

RELATES TO: KRS 205.520, 205.637, 216.380, 42 C.F.R. 400.203, 413.70, 440.2, 440.20(a), 447.321, 42 U.S.C. 1395l(h), 1396r-8(a)(7)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637(3), 205.6310, 205.8453, 42 U.S.C. 1396a, 1396b, 1396d[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.

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

(3) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).

(4) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(5)[~~(4)~~] "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).

(6) "Flat rate" means a set and final rate representing reimbursement in entirety with no subsequent cost settling.

(7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.

(8) "Lock-in recipient's designated hospital" means the hospital designated to provide nonemergency care for a lock-in recipient pursuant to 907 KAR 1:677.

(9) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

(10)[~~(5)~~] "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

(11) "Recipient" is defined by KRS 205.8451(9).

Section 2. In-State Outpatient Hospital Service Reimbursement. (1)(a) Except for critical access hospital services, [~~and~~] outpatient hospital laboratory services, and a service referenced in subsection (6) of this section, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.

(b) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.

(2) Except as established in subsection (6) of this section, a facility specific outpatient cost-to-charge ratio paid during the course of a hospital's fiscal year shall be designed to result in reimbursement, at the hospital's fiscal year end, equaling ninety-five (95) percent of a facility's total outpatient costs incurred during the hospital's fiscal year.

(3) Except as established in subsections (4) and (6) of this section:

(a) Upon reviewing an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to ninety-five (95) percent of the facility's total outpatient costs, excluding laboratory services, incurred in the corresponding fiscal year; and

(b) Upon receiving and reviewing an in-state outpatient hospital's finalized cost report for the hospital's fiscal year, the department shall settle final reimbursement, excluding laboratory services, to the facility equal to ninety-five (95) percent of the facility's total outpatient costs incurred in the corresponding fiscal year.

(4)(a) The department's total reimbursement for outpatient hospital services shall not exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reimbursing for outpatient hospital services at ninety-five (95) percent of costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce the final outpatient hospital service reimbursement for each hospital to equal a percent of costs which shall result in the total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

(5) In accordance with 42 U.S.C. 1396r-8(a)(7), a hospital shall include the corresponding healthcare common procedure coding (HCPC) code if billing a revenue code of 250 through 261 or 634 through 636 for an outpatient hospital service.

(6)(a) Except for a critical access hospital, the department shall reimburse a flat rate of twenty-five (25) dollars for a screening of a lock-in recipient to determine if an emergency medical condition exists.

(b) A hospital shall use revenue code 451 to bill for a service referenced in paragraph (a) of this subsection.

(c) A service or reimbursement for a service referenced in subsection (a) of this section, shall not be included:

1. With a hospital's costs for reimbursement purposes; and

2. In any cost settlement between the department and hospital.

(7) In accordance with 907 KAR 1:014:

(a) Except for a service referenced in subsection (6) of this section, the department shall not reimburse for a nonemergency service provided to a lock-in recipient if provided by a hospital other than the lock-in recipient's designated hospital; or

(b) The department shall not reimburse for a nonemergency service provided to a lock-in recipient in an emergency department of a hospital.

Section 3. Out-of-State Outpatient Hospital Service Reimbursement. Excluding services provided in a critical access hospital and laboratory services, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be ninety-five (95) percent of the average in-state outpatient hospital cost-to-charge ratio.

Section 4. Critical Access Hospital Outpatient Service Reimbursement. (1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).

(2) A critical access hospital shall comply with the cost reporting requirements established in Section 6 of this administrative regulation.

Section 5. Outpatient Hospital Laboratory Service Reimbursement. (1) The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:

(a) At the Medicare-established technical component rate for the service in accordance with 907 KAR 1:029 if a Medicare-established component rate exists for the service; or

(b) By multiplying the facility's current outpatient cost-to-charge ratio by its billed laboratory charges if no Medicare rate exists for the service.

(2) Laboratory service reimbursement, in accordance with subsection (1) of this section, shall be:

(a) Final; and

(b) Not settled to cost.

(3) An outpatient laboratory hospital laboratory service shall be reimbursed in accordance with this section regardless of whether the service is performed in an emergency room setting or in a non-emergency room setting.

Section 6. Cost Reporting Requirements. (1) An in-state outpatient hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1, the Supplemental Medicaid Schedule KMAP-4 and the Supplemental Medicaid Schedule KMAP-6:

(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 provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare it shall simultaneously submit a copy of the cost report to the department.

2. If a catastrophic circumstance exists, as determined by the department (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) If a cost report indicates payment is due by a hospital to the department, the hospital shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due by the hospital to the department and the hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)(a) If it is determined that an additional payment is due by a hospital after a final determination of cost has been made by the department, the additional payment shall be due by a hospital to the department within sixty (60) days after notification.

(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 7. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision[~~shall be effective contingent upon the department's receipt of federal financial participation for the respective provision~~].

Section 8. Appeals. A hospital may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Worksheet E-3, Part III, Page 12, May 2004 edition";

(b) "Supplemental Medicaid Schedule KMAP-1", May 2004 edition;

(c) "Supplemental Medicaid Schedule KMAP-4", May 2004 edition; and

(d) "Supplemental Medicaid Schedule KMAP-6", 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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANIE MILLER, Secretary
APPROVED BY AGENCY: July 1, 2010
FILED WITH LRC: July 1, 2010 at 4 p.m.

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Jill Hunter, Darlene Burgess, or Stuart Owen

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

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

(a) How the amendment will change this existing administrative regulation: DMS is amending reimbursement by reimbursing a flat rate of $25 for a screening of a lock-in recipient to determine if the recipient has an emergency medical condition; by not reimbursing for a nonemergency service provided to a lock-in recipient in an emergency department of a hospital; and by not reimbursing for a nonemergency service (other than a screening to determine if an emergency medical condition exists) provided to a lock-in recipient if the hospital is not the lock-in recipient's designated hospital.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to control excessive Medicaid utilization and to ensure the availability of funding necessary for the continued operation of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by KRS 205.8453 and 205.6310 by curtailing excessive Medicaid emergency room utilization.

(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 hospitals providing outpatient services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In-state Hospitals will have to use revenue code 451 to bill for screenings for lock-in recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no costs on regulated entities other than administrative costs associated with altering their billing practice for screenings for lock-in recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outpatient hospitals as a whole may benefit in that Medicaid funds that have been expended due to excessive utilization with lock-in recipients will be reduced; thus, preserving Medicaid funds for appropriate utilization and reimbursement.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates minimal administrative costs associated with Medicaid Management Information System (MMIS) programming to implement the amendment initially. DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

(b) On a continuing basis: DMS anticipates reducing expenditures by approximately DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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 amendment, including the amendment after comments, does not establish any fees, nor does it directly or indirectly increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment, including the amendment after comments, does not establish or increase any fees.

(9) Tiering: Is tiering applied? Critical access outpatient hospital reimbursement differs from other outpatient hospital reimbursement as critical access hospital reimbursement is established in federal regulation. The rate for screening is applied to lock-in recipients only as they are recipients that have been identified as excessively or in appropriately utilizing Medicaid services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient hospital services including the county and state owned are affected by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS

205.520, 194A.030, 194A.050, 205.560, 205.6310, 205.8453, 42 U.S.C. 1396a(30), 42 C.F.R. 440.20, and 447.321.

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 amendment is not expected to generate additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates initial, minimal administrative cost associated with programming its Medicaid Management Information System (MMIS) to conform to the amendment. DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no future costs associated with the amendment. DMS anticipates reducing expenditures by approximately $100,000 (state and federal combined) annually by implementing the amendment.

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. The amendment is not mandated, but 42 C.F.R. 440.20 and 447.321 address outpatient hospital reimbursement. 42 C.F.R. 400.203 establishes a provision regarding procedure coding.

2. State compliance standards. KRS 205.8453 charges Cabinet for Health and Family Services and the Department for Medicaid Services to institute "other measures necessary or useful in controlling fraud and abuse." KRS 205.560 addresses Medicaid reimbursement. KRS 205.637 addresses Medicaid reimbursement to county-owned and operated hospitals. KRS 205.6310 states: "The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following: criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists; reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency; reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists; except for emergency room services rendered to children under the age of six (6), prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency; and the provisions of this section shall apply to any managed care program for Medicaid recipients."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(30)(A) requires a state to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." Additionally, 42 C.F.R. 447.321 establishes the upper payment limit for outpatient hospital reimbursement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(Amendment)

907 KAR 1:019. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8[~~, Pub.L. 109-91~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the G.A.

EFFECTIVE: July 1, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5632, [~~and~~] Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564, tamper-resistant prescription requirements pursuant to 42 U.S.C. 1396b(i), and combats prescription fraud and abuse pursuant to KRS 205.8453.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

(4) "Covered outpatient drug" is defined by 42 U.S.C. 1396r-8(k)(2).

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

(6)[~~(5)~~] "Department's pharmacy Internet Web site" or "Web site" means the Internet Web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms/Pharmacy.htm [~~http://www.chfs.ky.gov/dms~~].

(7)[~~(6)~~] "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physi-

cal formulation recognized as a dosage form by the Food and Drug Administration.

(8)[~~(7)~~] "Drug list" means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, drug categories, or related items and dispensing and prescribing information.

(9)[~~(8)~~] "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(10)[~~(9)~~] "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically- meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(11) "Emergency supply" means a seventy-two (72) hour supply.

(12) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13)[~~(10)~~] "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(14)[~~(11)~~] "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(15)[~~(12)~~] "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(16)[~~(13)~~] "Manufacturer" is defined in 42 U.S.C. 1396r-8(k)(5).

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

(18)[~~(15)~~] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(19)[~~(16)~~] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(20)[~~(17)~~] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(21)[~~(18)~~] "Prescriber" means a health care professional who:

(a)[~~,~~] within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(22)[~~(19)~~] "Recipient" is defined by KRS 205.8451(9).

(23)[~~(20)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(24)[~~(21)~~] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A covered outpatient drug, nonoutpatient drug, or diabetic supply covered via this administrative regulation[~~drug covered through the Outpatient Pharmacy Program~~] shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) A covered outpatient drug covered via this administrative regulation shall be prescribed on a tamper-resistant pad unless exempt pursuant to subsection (3) of this section.

(3) The tamper-resistant pad requirement established in subsection (2) of this section shall not apply to:

(a) An electronic prescription;

(b) A faxed prescription; or

(c) A prescription telephoned by a prescriber.

(4) To qualify as a tamper-resistant pad prescription, a prescription shall contain:

(a) One (1) or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One (1) or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One (1) or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(5) The department shall cover the following diabetic supplies via the outpatient pharmacy program in accordance with this administrative regulation and not via the department's durable medical equipment program:

(a) A syringe with needle (sterile, 1cc or less);

(b) Urine test or reagent strips or tablets;

(c) Blood ketone test or reagent strip;

(d) Blood glucose test or reagent strips for home blood glucose monitor;

(e) Normal, low, or high calibrator solution, chips;

(f) Spring-powered device for lancet;

(g) Lancets per box of 100; or

(h) Home blood glucose monitor.

(6) The department shall have a drug list which:

(a) Lists:

1. Drugs, drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) [~~Specifies covered vaccines;~~

~~(g)~~] May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(g)[~~(h)~~] May be updated monthly or more frequently by the department; and

(h)[~~(i)~~] Shall be posted on the department's Internet pharmacy Web site.

(6)(a)[~~(3)~~] The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from the requirement established in paragraph (a) of this subsection,[~~this requirement~~] based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers

to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. [~~A drug if used to promote smoking cessation;~~

~~6.~~] Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

6.[~~7.~~] An over-the-counter drug provided to a Medicaid nursing facility service recipient. An over-the-counter drug provided to a Medicaid nursing facility service recipient shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;

7.[~~8.~~] A barbiturate;

8.[~~9.~~] A benzodiazepine;

9.[~~10.~~] A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

10.[~~11.~~] A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the United States Food and Drug Administration;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with subsection (7) of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

(b) Except as prohibited in subsection (4), of this section, non-controlled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) The prescription fill is for an outpatient service recipient, excluding an individual who is receiving supports for community living services in accordance with 907 KAR 1:145.

(4) A prescription fill for a maintenance drug for an outpatient service recipient who has demonstrated stability on the given maintenance drug, excluding an individual receiving supports for community living services in accordance with 907 KAR 1:145, shall be dispensed in a ninety-two (92) day supply unless:

(a) The department determines that it is in the best interest of the recipient to dispense a smaller supply; or

(b) The recipient is covered under the Medicare Part D benefit in which case the department shall not cover the prescription fill.

(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the compounded drug or compounded drug category.

(6) A prescriber shall make his or her national provider identifier (NPI) available to a pharmacist, and the prescriber's NPI shall be recorded on a pharmacy claim.

(7)(a)[~~An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:~~

~~(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;~~

~~(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;~~

~~(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or~~

~~(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.~~

~~(7) If it is determined by the department to be in the best interest of a recipient, the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.~~

~~(8) A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non emergency pharmacy services from the pharmacy to which the recipient has been restricted.~~

~~(9)(a)~~] Except as provided in paragraph (b), (c), or (d) of this subsection, the department shall cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions per recipient per month.

(b) The four (4) prescription limit shall not apply if the recipient:

1. Is under nineteen (19) years of age;

2. Uses insulin for the management of diabetes; or

3. Is a nursing facility resident who does not have Medicare Part D drug coverage.

(c) A pharmacist may utilize a four (4) prescription limit override code for a recipient whose prescription will exceed the four (4) prescription limit if the prescription is prescribed:

1. For any of the following conditions:

a. Acute infection or infestation;

b. Bipolar disorder;

c. Cancer;

d. Cardiac rhythm disorder;

e. Chronic pain;

f. Coronary artery or cerebrovascular disease (advanced arthrosclerotic disease);

g. Cystic fibrosis;

h. Dementia;

i. Diabetes;

j. End stage lung disease;

k. End stage renal disease;

l. Epilepsy;

m. Hemophilia;

n. HIV or AIDS or immunocompromised;
o. Hyperlipidemia;
p. Hypertension;
q. Major depression;
r. Metabolic syndrome;
s. Organ transplant; or
t. Psychotic disorder[~~;~~
~~u. Schizophrenic disorder; or~~
~~v. Schizotypal personality disorder~~]; or
2. As part of:
a. Acute therapy for migraine headache or acute pain; or
b. Suppressive therapy for thyroid cancer.

(d) An additional prescription or prescriptions may be covered if the department determines that it is in the best interest of the recipient to cover an additional prescription or prescriptions whether brand name or generic.

(8)[~~(10) Until close of business February 28, 2006, but no later than that date, the department shall cover unlimited generic prescriptions per member per month in accordance with the requirements and limitations established in this administrative regulation.~~

~~(11)~~] The department shall cover up to three (3) brand name prescriptions per member per month unless the department determines that it is in the best interest of the member to cover any additional brand name prescriptions.

(9)[~~(12)~~] A refill of a prescription shall not be covered unless at least ninety (90)[~~eighty (80)~~] percent of the prescription time period has elapsed.

Section 4. Prior Authorization Process. (1)(a) To request prior authorization for a drug:

1. The applicable form shall be completed and submitted to the department:

a. By fax, mail, express delivery service, or messenger service to the department; or

b. Via the department's pharmacy Internet Web site; or

2. A requester may provide the information required on the applicable form to the department verbally via the telephone number published on the department's pharmacy Internet Web site.

(b)[~~, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, via the Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents, by mail, express-delivery service, or messenger service to the department.~~] If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of a[~~the~~] recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number or submitted to the department via the department's pharmacy Internet Web site.

(2) A Drug Prior Authorization Request Form:

(a) Shall be used by a prescriber or pharmacist to request prior authorization for a drug except for a PPI/H2 blocker, a brand name drug, or an atypical antipsychotic agent;

(b) Shall be used by a pharmacist to request an early refill of a prescription; or

(c) May be used by a pharmacist[~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents. A request shall be submitted in accordance with the following:~~

~~(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist~~] to obtain prior authorization for special dispensing requests involving exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(3)(a) A Brand Name Drug Request Form, except as established in paragraph (c) of this subsection, shall be used by a prescriber to request prior authorization for a brand name drug if a generic form of the drug is available.

(b) Regarding a Brand Name Drug Request Form, a prescriber shall:

1. Complete the form;

2. Include on the form:

a. The handwritten phrase "band medically necessary" or "brand necessary"; and

b. The provider's signature for each specific drug requested; and

3. Indicate:

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) Submission of a Brand Name Drug Request Form shall not be required if:

1. The department has specifically exempted the drug, via the drug list, from this requirement; or

2.a. It has been determined by the department to be in the best interest of a recipient not to require submission of a Brand Name Drug Request Form; or

b. The prescriber certifies that the brand name drug is medically necessary in accordance with subsection (9) of this section.

(d) In addition to the requirements established in paragraphs (a) through (c) of this subsection, the prescriber certify a brand name only request by including for each brand name drug requested, the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

1. The prescription;

2. The nursing facility order sheet; or

3. A separate sheet of paper that includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) A Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents shall be:

(a) Used to request prior authorization for an atypical antipsychotic drug; and

(b) Completed and submitted as directed on the form.

(5) A Suboxone® and Subutex® Prior Authorization Request Form shall be:

(a) Used to request prior authorization for Suboxone® or Subutex®; and

(b) Completed and submitted as directed on the form.

(6) A Zyvox® (linezolid) Drug Authorization Request Form shall be:

(a) Used to request prior authorization for Zyvox®; and

(b) Completed and submitted as directed on the form.

(7) A Synagis® Prior Authorization Request Form shall be:

(a) Used to request prior authorization for Synagis®; and

(b) Completed and submitted as directed on the form.

(8)[~~(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:~~

~~1. Complete a Brand Name Drug Request Form;~~

~~2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and~~

~~3. Indicate on the Brand Name Drug Request Form:~~

~~a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and~~

~~b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.~~

~~(c) A Brand Name Drug Request Form shall not be required if:~~

~~1. It has been determined by the department to be in the best interest of a recipient not to require completion of a Brand Name Drug Request Form; and~~

~~2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.~~

~~(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a~~

~~brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:~~

~~1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;~~

~~2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and~~

~~3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.~~

~~(2)~~] If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with [~~subsection (1) of~~] this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:

a. Request that the prescriber obtain prior authorization from the department; or

b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with [~~subsection (1) of~~] this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and

b. Exist if, based on the clinical judgment[~~judgement~~] of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with [~~subsection (1) of~~] this section:

a. Submit a prior authorization request to the department's urgent fax number or to the department via the department's pharmacy Internet Web site[~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp~~]; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) or (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(9) If a prescriber submits a prescription to a pharmacy via telephone, the prescriber shall also fax the prescription to the pharmacy within forty-eight (48) hours of submitting it via telephone.

(10)[~~(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:~~

~~(a) The prescription;~~

~~(b) The nursing facility order sheet; or~~

~~(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.~~

~~(4)~~] The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax or via the department's pharmacy Internet Web site [~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp~~] to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(11)(a)[~~(5)~~] The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days.

(b) Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(12)[~~(6)~~] Prior authorization of drugs for a Medicaid long-term care recipient in a nursing facility shall be in accordance with the following:

(a) The department may specify in its drug list specific drugs or drug classes which shall:

1. Not be exempted from prior authorization; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.5632.

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug, which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c)1. Within thirty (30) days of the date the committee's recommendation is posted on the department's pharmacy Internet Web site, the secretary, in consultation with the commissioner and the department's pharmacy staff[director], shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization.

2. If the recommendation of the committee is not accepted, the secretary shall inform the committee of[present] the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) The person gives notice to the department (and gives a copy to the DMRAB chairperson) by fax or email at least five (5) business days[Written notice has been given to the chairperson at least twenty-four (24) hours] prior to the meeting.

(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed five (5) minutes; or

(b) By an individual on a subject shall not exceed five (5) minutes[The DMRAB may establish time limits for presentations].

(3) The proposed agenda shall be posted on the department's pharmacy Internet Web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

(a)1. A verbal presentation in aggregate per drug per drug manufacturer shall not exceed five (5) minutes;

2. A verbal presentation by an individual on a subject shall not exceed five (5) minutes[The time limit for a verbal presentation shall not exceed five (5) minutes in aggregate per drug per manufacturer or five (5) minutes by an individual speaking on a particular position];

3.[2.] A request to make a verbal presentation shall be submitted in writing via fax or e-mail to the department with a copy to the chair of the P&T Committee no later than five (5) business days[forty-eight (48) hours] in advance of the P&T Committee meeting;

4.[3.] An individual may only present new information (package insert changes, new indication or peer-reviewed journal articles) on a product or information on a new product; and

5.[4.] A presentation shall be limited to an agenda item; or

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1.a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pdf format); or

b. Mailed to the department with a total of twenty-five (25)[eighteen (18)] copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205.564(8).

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer's name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and

(f) Name of a contact person. [(8) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.

(9) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.]

Section 8. Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's pharmacy Internet Web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:

(a) Be in writing;

(b) Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;

(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's pharmacy Internet Web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for

processing in accordance with the provisions of KRS Chapter 13B.

Section 9. Confirming Receipt of Prescription. (1) A recipient, or a designee of the recipient, shall sign their name on a log at a pharmacy confirming that the recipient received the prescription.

(2) A pharmacist shall maintain, or be able to produce a copy of, a log of recipient signatures referenced in subsection (1) of this section, for at least six (6) years.

Section 10. Exemptions to Prescriber Requirements. The department shall reimburse for:

(1) A full prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for a full prescription is in the best interest of the recipient; or

(2) An emergency supply of a prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for the emergency supply is in the best interest of the recipient.

Section 11. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 12. Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug or decision regarding the amount of a drug dispensed based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 13.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Drug Prior Authorization Request Form", May 15, 2007 edition;

(b) "Brand Name Drug Request Form", May 15, 2007 edition;

(c) "Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents", May 15, 2007 edition;

(d) "Subaxone® and Subutex® Prior Authorization Request Form", September 22, 2009 edition;

(e) "Zyvox® (linezolid) Drug Authorization Request Form", January 11, 2010 edition; and

(f) "Synagis® Prior Authorization Request Form", September 16, 2009 edition. [~~"MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, edition"; and~~

~~(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, edition"; and~~

~~(c) "MAP-012802 PPI and H2 Blocker Request Form, October 18, 2004, edition".~~]

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee Barnard, Trista Chapman, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements various Medicaid pharmacy program efficiencies as mandated by Part I, G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. The amended regulation requires prescribers to be Kentucky Medicaid Program providers; increases the period before a prescription can be refilled from after 80 percent of the prescription period has lapsed to 90 percent; reimburses for diabetic supplies via the pharmacy program rather than the durable medical equipment program in order to procure rebates for the items; updates forms used for prior authorization purposes; establishes that a recipient must sign a log at the pharmacy to confirm receipt of a prescription and requires that requests to present at a Drug Management Review Advisory Board (DMRAB) or Pharmacy and Therapeutics (P& T) Committee meeting must be submitted at least five (5) business days in advance. Additionally, the amendment complies with 42 U.S.C. 1396b(i), which contains a provision requiring Medicaid-reimbursed providers to use tamper-resistant prescription drug pads in their prescribing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing pharmacy program efficiencies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing Medicaid pharmacy program efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing Medicaid pharmacy program efficiencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid-reimbursed prescribing providers are affected by this amendment and recipients are affected as well.

(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: Regulated entities will be required to use tamper-resistant prescription drug pads in their prescribing and

non-Medicaid providers will have to enroll in Kentucky's Medicaid program in order to prescribe controlled substances for Kentucky Medicaid recipients. Medicaid recipients will have to sign, at the pharmacy, confirming their receipt of prescriptions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Medicaid-reimbursed prescribing providers may experience costs associated with purchasing tamper-resistant prescription drug pads.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers who comply will receive reimbursement for Medicaid recipient prescriptions and recipients will receive prescriptions.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(b) On a continuing basis: DMS estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(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 Title XIX of the Social Security Act and state matching funds of general fund appropriations.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396b(i)(23).

2. State compliance standards. KRS 205.560 establishes "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Prescriptions, if not executed electronically, must be executed on a tamper resistant pad.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal law or regulation does not require a prescriber to be a provider enrolled in the given state's Medicaid program, but DMS is implementing this requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. DMS is implementing the requirement that a prescriber be an enrolled Medicaid program provider in order to prevent recipient from doctor shopping in order to procure additional drugs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all Medicaid-reimbursed prescribing providers as well as non-Medicaid providers who are accustomed to prescribing controlled substances for Medicaid recipients.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA, KRS 194A.010(1), 194A.030(2), 205.520(3), 205.560(1), 205.8453, 42 U.S.C. 1396b(i)(23) and 1396r-8.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to implement this amendment during the first year. The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment during subsequent years. The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.

RELATES TO: KRS 205.520, 42 C.F.R. 424.57, 440.230, 441 Subpart B, 45 C.F.R. 162.1002, 42 U.S.C. 1396d(r), 1395mm(20)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d, Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) "Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:

(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;

(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;

(c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) days prior to discharge from a hospital or nursing facility if:

1. The item was provided for purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. No billing is done prior to the date of the recipient's discharge from the facility.

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

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(8) "Durable medical equipment" or "DME" means medical equipment which:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home.

(9) "Family choices" means 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.

(10) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(11) "Home" means a place where the recipient resides excluding:

(a) A nursing facility;

(b) A hospital;

(c) An intermediate care facility for individuals with mental retardation or a developmental disability; or

(d) An institution for individuals with a mental disease as defined in 42 U.S.C. 1396d(i).

(12) "Incidental" means that a medical procedure or service:

(a) Is performed at the same time as a more complex primary procedure or service; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure or service.

(13) "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(14) "Medicaid DME Program Fee Schedule" means a list, located at http://chfs.ky.gov/dms, containing the current Medicaid maximum allowable amount established by the department for a covered item of durable medical equipment, a prosthetic, an orthotic, or a medical supply.

(15) "Medical supply" means an item that is:

(a) Consumable;

(b) Nonreusable;

(c) Disposable; and

(d) Primarily and customarily used to serve a medical purpose.

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

(17) "Medicare accreditation" means having met the quality standards established in 42 U.S.C. 1395mm(20).

(18) "Mutually exclusive" means that two (2) DMEPOS items:

(a) Are not reasonably provided in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent duplicate or very similar items; or

(c) Represent medically inappropriate use of HCPCS codes.

(19)[~~(18)~~] "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(20)[~~(19)~~] "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(21)[~~(20)~~] "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner, physician's assistant, or chiropractor[~~or physician's assistant~~] who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

(b) If an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically-necessary item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

(22)[~~(21)~~] "Prior authorization" means approval which a supplier shall obtain from the department before being reimbursed.

(23)[~~(22)~~] "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(24)[~~(23)~~] "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits which could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

(25)[~~(24)~~] "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(26)[~~(25)~~] "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)(a) Except as provided in subsection (2)(b) of this section, coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:

1. Be based on medical necessity and reasonableness;

2. Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

3. Require prior authorization in accordance with Section 7 of this administrative regulation;

4. Be provided in compliance with 42 C.F.R. 440.230(c); and

5. Be restricted to an item used primarily in the home.

(b) Coverage of prosthetic devices shall not exceed $1,500 per twelve (12) month period per member of the family choices benefit plan.

(2) Unless otherwise established in this administrative regulation;

(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1)(a) of this section that was in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1)(a) of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated by 45 C.F.R. 164.316.

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods.

(7) A CMN shall contain:

(a) The recipient's name and address;

(b) A complete description of the item or service ordered;

(c) The recipient's diagnosis;

(d) The expected start date of the order;

(e) The length of the recipient's need for the item;

(f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number, and National Provider Identifier (NPI)[~~Unique Provider Identification Number (UPIN)~~], if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

(17) A supplier shall not ship supplies to a recipient unless the supplier has:

(a) First had direct contact with the recipient or the recipient's caregiver; and

(b) Verified:

1. That the recipient wishes to receive the shipment of supplies;

2. The quantity of supplies in the shipment; and

3. Whether or not there has been a change in the use of the supply.

(18) A verification referenced in subsection (17) of this section for each recipient shall be documented in a file regarding the recipient.

(19) If a supplier ships more than one (1) month supply of an item, the supplier shall assume the financial risk of nonpayment if the recipient's Medicaid eligibility lapses or a HCPCS code is discontinued.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) The following items shall be covered for purchase only:

(a) A cane;

(b) Crutches;

(c) A standard walker;

(d) A prone or supine stander;

(e) A noninvasive electric osteogenesis stimulator; or

(f) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.

(2) The following items shall be covered for rental only:

(a) An apnea monitor;

(b) A respiratory assist device having bivalve pressure capability with backup rate feature;

(c) A ventilator;

(d) A negative pressure wound therapy electric pump;

(e) An electric breast pump;

(f) The following oxygen systems:

1. Oxygen concentrator;

2. Stationary compressed gas oxygen;

3. Portable gaseous oxygen;

4. Portable liquid oxygen; or

5. Stationary liquid oxygen; or

(g) Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) or (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(4)(a) A MAP-1001 form shall be completed if a recipient requests an item or service not covered by the department.

(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:

1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;

2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;

3. The DME supplier shall complete the supplier information on the MAP 1001;

4. The DME supplier shall provide a copy of the completed MAP 1001 to the recipient; and

5. The DME supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the

department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized DME item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding.

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If no warranty is in effect on the requested repair; and

(d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.

(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of DME that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; [~~or~~]

(h) An item determined not medically necessary, clinically appropriate or reasonable by the department; or

(i) Diabetic supplies, as indicated on the Medicaid DME Program Fee Schedule, shall:

a. Be covered via the Medicaid outpatient pharmacy program; and

b. Not be covered via the Medicaid durable medical equipment program.

(2) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(3) Durable medical equipment, prosthetics, orthotics and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

(a) An item or repair billed to the department at $500[~~$300~~] or more;

(b) Rental of equipment as indicated on the Medicaid DME Program Fee Schedule excluding oxygen services after twelve (12) continuous months of service;

(c) [~~A therapeutic shoe or boot;~~

~~(d)~~] Orthopedic shoes;

(d)[~~(e)~~] An adjustment to a prosthetic or orthotic;

(e)[~~(f)~~] An augmentative communication device;

(f)[~~(g)~~] A customized DME item;

(g)[~~(h)~~] A replacement DME item, prosthetic, or orthotic if replacement is prior to the:

1. Usual and customary lifetime of the item; or

2. Limitation set by the department as indicated the Medicaid DME Program Fee Schedule;

(h)[~~;~~

~~(i)~~] A nutritional supplement;

(i)[~~(j)~~] An amino acid modified preparation or a low-protein modified food product;

(j)[~~(k)~~] A loaner item for a member-owned piece of equipment that is being repaired;

(k)[~~(l)~~] A DMEPOS item denoted by a general or nonspecific HCPCS code;

(l)[~~(m)~~] An item designated on the Medicaid DME Program Fee Schedule as requiring prior authorization;

(m)[~~(n)~~] An item which exceeds the quantity limitation set in the Medicaid DME Program Fee Schedule; or

(n)[~~(o)~~] An item designated by a HCPCS code not indicated on the Medicaid DME Program Fee Schedule that is determined by the department to be a covered benefit.

(2) If an item requires prior authorization, a supplier shall comply with the following:

(a) Submit all required documentation prior to or within one (1) year from the date of service;

(b) Submit a written request to the department for prior authorization which shall include the prescriber's order; [~~and~~]

(c) Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization; and

(d) If the required prior authorization submittals referenced in this subsection are not submitted within the established time frames, the prior authorization request shall be denied.

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

(4) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.

(7) A supplier shall request prior authorization by mailing, faxing, or electronically submitting[~~or faxing~~] the following information to the department:

(a) A completed prior authorization form MAP-9;

(b) A completed CMN; and

(c) If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.

(8) The following additional information shall be required for prior authorization of a customized item:

(a) An estimate of the fitting time;

(b) An estimate of the fabrication time;

(c) A description of the materials used in customizing the item; and

(d) An itemized estimate of the cost of the item, including the cost of labor.

(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:

(a) A description of the nature of the repair;

(b) An itemization of the parts required for the repair;

(c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(10) An item shall be prior authorized based on:

(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b)1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph does not exist or is unavailable.

(11) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity and:

(a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

(12)(a) Prior authorization by the department shall not:

1. Be a guarantee of recipient eligibility; or

2. Guarantee reimbursement.

(b) Eligibility verification shall be the responsibility of the supplier.

(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(15)(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid DME Program Fee Schedule; or

(c) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;

2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1161, E1220, E1229, E1231 through E1238, or K0009; or

3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015, E1028 through E1030, E2201 through E2204, E2300, E2301, E2310, E2311, E2321 through E2330, E2340 through E2343, E2373 through E2376, E2381 through E2392, E2394 through E2397[~~E2396, E2399~~], E2601 through E2621, K0108, K0669, K0734 through K0737, or L8499.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by a HCPCS code not currently on the Medicaid DME Program Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.

(b) The department shall post HCPCS code change information on its Web site accessible at http://chfs.ky.gov/dms. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) Reimbursement for the purchase of an item that is currently being rented shall be[~~:~~

~~(a)~~] for an item that has been rented for less than ten (10)[~~three (3)~~] months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; [~~or~~

~~(b) For an item that has been rented for three (3) months or more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.~~]

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid DME Program Fee Schedule; or

(b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

(7) Except for an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of ten (10)[~~twelve (12)~~] consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lessor of:

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

(b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;

(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number;

(2) Adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;

(3)(a) Provide proof of accreditation, by an approved Medicare accreditation entity, to the department every three (3) years unless exempt from accreditation by CMS;

(b) If exempt from accreditation by CMS, provide a letter to the department on company letterhead that indicates the CMS exemption status;

(4)[~~and adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;~~

~~(2)~~] Be enrolled in the Kentucky Medicaid Program in accordance with:

(a) 907 KAR 1:671; and

(b) 907 KAR 1:672;

(5)[~~(3)~~] Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

(6)[~~(4)~~] Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider so informed the recipient of noncoverage prior to providing the service.

Section 10. Appeal Rights. (1) If an individual is not prior authorized for DMEPOS based upon an application of this administrative regulation, the department shall:

(a) Conduct a reconsideration review within thirty (30) days from the receipt of the request;

(b) Base the reconsideration review decision solely upon information that is:

1. Contained in the individual's medical records; and

2. Submitted with the written request pursuant to subsection (1) of this section; and

(c) Issue a notification of approval or denial within five (5) working days of a reconsideration review.

(2) If an outcome of a services reconsideration review results in a denial, the department shall grant an appeal in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(4)[~~(2)~~] An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(5)[~~(3)~~] An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

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

(a) "Form MAP-9, Prior Authorization Form", July 2010[~~February 2005~~] edition, Department for Medicaid Services;

(b) "Form MAP-1000, Certificate of Medical Necessity", July 2010[~~February 2005~~] edition, Department for Medicaid Services;

(c) "Form MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods", July 2010[~~February 2005~~] edition, Department for Medicaid Services;

(d) "Medicaid DME Program Fee Schedule", July 2010[~~January 2008~~] edition; and

(e) "Form MAP 1001, Advance Member Notice", September 2006 edition.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patricia Biggs or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(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 provisions related to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to coverage and reimbursement requirements for durable medical equipment, medical

supplies, prosthetics, and orthotics.

(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: Among the amendments are: establishing that diabetic supplies will be reimbursed via the Medicaid pharmacy program rather than the durable medical equipment program; raising the prior authorization threshold for items from $300 to $500; reducing the time frame for when an item converts from a rental to a purchase (12 - 10 months); defining Medicare accreditation and requiring suppliers to document Medicare accreditation to DMS; establishing a reconsideration review option of a prior authorization denial and authorizing chiropractors to prescribe as the Centers for Medicare and Medicaid Services (CMS) permits this.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with the "budget bill" (specifically Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA) mandate to implement Medicaid pharmacy efficiencies. Moving diabetic supplies to the pharmacy program will enable the Department for Medicaid Services (DMS) to procure rebates on the supplies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by moving diabetic supply reimbursement from the durable medical equipment program to the Medicaid pharmacy program as a pharmacy efficiency implemented in accordance with Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. Additionally, it amends Medicaid durable medical equipment policy as authorized by KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1) and 42 U.S.C. 1396a, b, and d.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: amendment conforms to the content of the authorizing statutes by moving diabetic supply reimbursement from the durable medical equipment program to the Medicaid pharmacy program as a pharmacy efficiency implemented in accordance with Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. Additionally, it amends Medicaid durable medical equipment policy as authorized by KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1) and 42 U.S.C. 1396a, b, and d.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: DMS estimates that 2,896 DME providers are enrolled in the Medicaid program. Currently, there are approximately 807,000 enrolled Medicaid recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. DME providers will have to provide Medicare accreditation documentation to DMS every 3 years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated entities should benefit from policy clarifications and a reduced administrative burden.

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

(a) Initially: DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

(b) On a continuing basis: DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) is the only government entity affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Part I. G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA, 42 C.F.R. 424.57 and 45 C.F.R. 162.1002 and 164.316.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional cost. DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million (state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost. DMS anticipates no additional cost and estimates that increasing the prior authorization threshold from $300 to $500 will reduce expenditures by $150,000 annually (state and federal combined) due to reduced contractor costs (as prior authorization for this is performed by a contractor.) Additionally, DMS anticipates receiving $2.0 million

(state and federal combined) annually in rebates as a result of reimbursing for diabetic supplies via the pharmacy program rather than the durable medical equipment program.

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

Revenues (+/-):

Expenditures (+/-):

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(Amendment)

907 KAR 1:677. Medicaid recipient lock-in program.

RELATES TO: KRS 205.8453, 21 C.F.R. 1308.12, 1308.13, 1308.14, 42 C.F.R. 431.54, 433.111(b), 42 U.S.C. 1396(a), 1396 (a)(2)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6318, 205.6310, 205.8453, 42 C.F.R. 431.54, Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly[~~, 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) 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. KRS 205.8453(4) and 205.6318(6) direct the cabinet to promulgate administrative regulations to identify misutilization of Medicaid services, to institute other measures necessary or useful in controlling fraud and abuse. This administrative regulation establishes[~~sets forth~~] the Medicaid lock-in provisions relating to recipient overutilization of the Medicaid Services [~~Program~~].

Section 1. Definitions. "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Cabinet" is defined by KRS 205.010(1).

(3) "Controlled substance" means a drug or substance identified in 21 C.F.R. 1308.12, 1308.13, or 1308.14.

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

(5) "Emergency medical condition" is:

(a) Defined by 42 U.S.C. 1395dd(e); and

(b) Identified in the department's Table of Lock-In Emergency Medical Conditions.

(6) "Emergency service" means a service:

(a) Defined by 42 C.F.R. 447.53; and

(b) For a condition listed in the Table of Lock-in Emergency Medical Conditions.

(7) "Fraud" is defined by KRS 205.8451(2).

(8) "Lock-in program" means a department program which restricts a recipient to receiving Medicaid services from a designated provider.

(9) "Lock-in recipient" means a recipient enrolled in the lock-in program.

(10) "Medicaid Management Information System" means the department's mechanized claims processing and information retrieval system as defined by, and in accordance with, 42 C.F.R. 433.111(b).

(11) "Nonemergency care" means a service for a nonemergency condition.

(12) "Overutilization" means the receipt of a treatment, drug, medical supply, or other Medicaid service from one (1) or more providers in an amount, duration, or scope that exceeds the amount that would reasonably be expected to result in a medical or health benefit to the recipient.

(13) "Physician" is defined by KRS 311.550(12).

(14) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(15) "Prescriber" means a physician who:

(a) Within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(16) "Primary care provider" means an advanced registered nurse practitioner, a physician, or physician assistant.

(17) "Provider" is defined by KRS 205.8451(7).

(18) "Provider abuse" is defined by KRS 205.8451(8).

(19) "Recipient" is defined by KRS 205.8451(9).

(20) "Recipient abuse" is defined by KRS 205.8451(10)

(21) "Utilization review" means a department review and analysis:

(a) Of Medicaid claims for a twelve (12) consecutive month period including:

1. A recipient's medical conditions; and

2. Medicaid services received by the recipient; and

(b) To determine if recipient overutilization has occurred.

Section 2. Review of Complaints. (1) A complaint relating to potential fraud, recipient abuse, provider abuse, or overutilization shall be reported to the department or Cabinet for Health and Family Services, Office of Inspector General via the Medicaid and Welfare Fraud and Abuse hotline at 1-800-372-2970.

(2) The department shall respond to a complaint referenced in subsection (1) of this section by conducting a utilization review of the recipient.

(3) A utilization review of a recipient referenced in subsection (2) of this section shall include a review of paid claims using data collected from the Medicaid Management Information System to identify if the recipient:

(a) Utilized Medicaid services at a frequency or amount which meets criteria established in Section 4 of this administrative regulation; and

(b)1. Shall be enrolled in the lock-in program to manage nonmedically necessary overutilization of Medicaid services by the recipient; or

2. Shall not be enrolled in the lock-in program if the recipient:

a. Resides in a long term care nursing facility;

b. Is under the age of eighteen (18) years;

c. Receives Medicare benefits; or

d. Overutilized Medicaid services necessarily to treat a complex health condition, as determined by the department's licensed pharmacist, physician, and registered nurse.

Section 3. General Exemption. If the department determines that not enrolling a recipient in the lock-in program is in the best interest of the recipient, the department shall not enroll the recipient in the lock-in program.

Section 4. Lock-in Criteria. Except as established in Section 2(3)(b)2 and Section 3 of this administrative regulation, the department shall initiate the lock-in process, as established in Section 5 of this administrative regulation, for a recipient if:

(1) At least two (2) of the following situations occurred in any two (2) ninety (90) calendar day periods within twelve (12) consecutive months:

(a) The recipient received services from at least eight (8) different providers, including a physician, advanced registered nurse practitioner, or physician assistant;

(b) The recipient received at least fifteen (15) prescription drugs;

(c) The recipient received prescriptions from at least eight (8) different prescribers;

(d) The recipient received the same services from at least two (2) different providers within the same day;

(e) The recipient had at least twelve (12) office visits;

(f) The recipient received services from at least three (3) different physicians, ARNPs, or PAs:

1. Of the same type or specialty; and

2. For the same or a similar diagnosis; or

(g) The recipient received at least four (4) prescriptions for different controlled substances as identified in the department's Lock-in Table Controlled Substances; or

(2) At least one (1) of the following conditions occurred in any two (2) ninety (90) calendar day periods within twelve (12) consecutive months:

(a) The recipient had at least four (4) hospital emergency department visits for a condition that was not an emergency medical condition;

(b) The recipient received services from at least three (3) different hospital emergency departments for a condition that was not an emergency medical condition;

(c) The recipient had prescriptions for the same drugs dispensed on the same or subsequent day at least twice;

(d) The recipient received drugs from at least three (3) different pharmacies;

(e) The recipient received at least twenty-four (24) prescriptions;

(f) The recipient received a prescription for a controlled substance, as identified the department's Lock-in Table of Controlled Substances from at least two (2) different prescribers;

(g) The recipient had duplicative or contraindicated utilization of:

1. Medications, medical supplies, or appliances dispensed by or prescribed by at least two (2) prescribers; or

2. Medical visits, procedures, or diagnostic tests from at least two (2) providers; or

(h) The recipient received at least twelve (12) prescriptions for a controlled substance as identified in the department's Lock-in Table of Controlled Substances.

(3) A recipient shall be locked in to one (1) designated hospital for nonemergency care, except for a screening to determine if an emergency medical condition exists pursuant to 907 KAR 1:014, if the recipient:

(a) Meets the lock-in utilization criteria pursuant to subsection (1) or (2) of this section; and

(b) Meets the criteria in subsection(2)(a)(b) of this section.

Section 5. Lock-in Process. Upon identification of a recipient who shall be enrolled in the lock-in program in accordance with Section 2(3)(a)(b)1. of this administrative regulation, the department shall:

(1) Send a written notification to the recipient, which includes:

(a) A brief summary of the recipient's utilization review findings:

(b) The reason for enrolling the recipient in the lock-in program;

(c) A description of the lock-in program;

(d) The effective date of lock-in program enrollment;

(e) Identification of the recipient's designated providers as established in subsection (2)(a) of this section;

(f) Information relating to the recipient's right to a hearing as established in Section 9 of this administrative regulation; and

(g) Contact information of an individual who may be contacted in writing or by telephone for information relating to the lock-in program; and

(2) Except for a recipient who requests a hearing relating to a department lock-in determination, enroll the recipient in the lock-in program within thirty (30) days of sending the written notification referenced in subsection (1) of this section by:

(a) Restricting the lock-in recipient to receiving nonemergency care and services for conditions which are not emergency medical conditions from designated providers including:

1. One (1) primary care provider who:

a. Shall be accessible to the recipient within normal time and distance standards for the community in which the recipient resides;

b. If the lock-in recipient has a designated hospital in accordance with subparagraph 4 of this paragraph:

(i) Shall have inpatient admission privileges at the recipient's designated hospital, or;

(ii) If the primary care provider does not have admission privileges at the recipient's designated hospital, shall have an arrangement with a provider who does have inpatient admission privileges at the recipient's designated hospital;

c. Shall provide services and manage the lock-in recipient's necessary health care services;

d. If the lock-in recipient needs a Medicaid-covered service other than the service of the designated primary care provider, shall complete and forward a Lock-in Recipient Referral to a referred provider;

e. Shall participate in the recipient's periodic utilization review as identified in subsection (2)(c) of this section; and

f. If the designated primary care provider is a physician, may serve as the lock-in recipient's designated controlled substance prescriber;

2. One (1) controlled substance prescriber who shall serve as the sole prescriber and manager of controlled substances for the lock-in recipient; and

3. One (1) pharmacy; and

4. If the recipient meets the criteria established in Section 4(3) of this administrative regulation, one (1) hospital;

(b) Maintaining the restrictions identified in paragraph (a) of this subsection for at least twenty-four (24) months; and

(c) Following the initial twenty-four (24) month period of lock-in enrollment as established in paragraph (b) of this subsection, conducting a utilization review at twelve (12) month intervals to:

1. Measure the effectiveness of the recipient's enrollment in the lock-in program; and

2. Determine if the recipient shall:

a. Continue enrollment in the lock-in program if the recipient:

(i) Does not use a designated provider; or

(ii) Meets the criteria as established in Section 4 of this administrative regulation; or

b. Be disenrolled if the recipient:

(i) Uses a designated provider; and

(ii) Does not meet the criteria established in Section 4 of this administrative regulation; and

(d) Providing the lock-in recipient with a written notification of the findings of a utilization review as identified in paragraph (c) of this subsection, including:

1. A decision to maintain enrollment in or disenrollment from the lock-in program; and

2. Appeal rights in accordance with Section 9 of this administrative regulation.

Section 6. Designated Providers. A designated provider as identified in Section 5(2)(a) shall serve as a designated provider of a lock-in recipient for at least twenty-four (24) months except for the following situations:

(1) The designated provider:

(a) Submits to the department a written request for a release from serving as the recipient's designated provider; and

(b) Serves as the recipient's designated provider until a comparable designated provider may be selected;

(2) The recipient relocates outside of the designated provider's geographic area;

(3) In accordance with Section 8(3) of this administrative regulation, the recipient submits a written request to the department which:

(a) Requests a designated provider change; and

(b) Includes information to support cause or a necessary reason for the change, including the recipient:

1. Was denied access to a needed medical service;

2. Received poor quality of care; or

3. Does not have access to a provider qualified to treat the recipient's health care needs;

(4) The designated provider withdraws or is terminated from participation in the Medicaid Program; or

(5) The department determines that it is in the best interest of the lock-in recipient to change the designated provider.

Section 7. Fees, Payments, and Nonpayments. (1) On behalf of a lock-in recipient, the department shall pay:

(a) At the beginning of each month:

1. A fee of ten (10) dollars to a designated primary care pro-

vider for the management of a lock-in recipient's necessary health care; and

2. Except for a designated controlled substance prescriber who also serves as a lock-in recipient's designated primary care provider, a fee of five (5) dollars to a designated controlled substance prescriber; and

(b) For:

1. A medical screening examination performed in the emergency department of a hospital to determine if an emergency medical condition exists; and

2. An emergency service.

(2) In addition to the fee established in subsection (1)(a)1. of this section, the department shall pay for necessary services provided to the recipient by the recipient's designated primary care provider.

(3) Except for a service as established in subsection (1)(b) of this section, the department shall not pay for a service rendered by a provider other than the recipient's designated primary care provider unless the designated primary care provider:

(a) Refers the recipient to the referred provider for a necessary service; and

(b) Completes and forwards a copy of the Lock-in Recipient Referral to the referred provider of the service.

Section 8. Lock-in Recipient Requirements. A lock-in recipient:

(1) Shall be restricted to receiving necessary nonemergency health care services from a designated provider as identified in Section 5(2)(a) of this administrative regulation except for services rendered by a referred provider in accordance with Section 7(3) of this administrative regulation;

(2) Shall be responsible for the payment of a service rendered by a provider who:

(a) Is not the recipient's designated primary care provider;

(b) Does not have a Lock-in Recipient Referral from the recipient's designated primary care provider; and

(c) Informs the lock-in recipient that the recipient shall be responsible for the costs of the provider's services before the service is rendered; and

(3) May request a change of a designated provider in accordance with Section 6(3) of this administrative regulation:

(a) Within ninety (90) days of the date of the recipient notification letter as identified in Section 5(1) of this administrative regulation; or

(b) At least once in a twelve (12) month period following initial enrollment in the lock-in program.

Section 9. Appeal Rights. A recipient who is notified of a department decision to enroll or maintain enrollment of the recipient in the lock-in program, shall have the right to request a hearing in accordance with 907 KAR 1:563,

Section 10. Fraud and Abuse Referral. If fraud, provider abuse, or recipient abuse is identified in the course of a department utilization review for lock-in purposes, the department shall comply with KRS 205.8453(3).

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

(a) The "Lock-in Table of Controlled Substances", April 2010 edition;

(b) The "Table of Lock-in Emergency Medical Conditions", April 2010 edition; and

(c) The "Lock-in Recipient Referral", June 2010 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, 6C-C, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~(1) "Department" means the Department for Medicaid Services and its designated agents.~~

~~(2) "Emergency services" means services for a medical condition for which a delay in treatment will likely result in the recipient's death, irreparable harm, immediate grave bodily harm, a life-threatening condition or permanent impairment of the recipient's health.~~

~~(3) "Fraud" means as defined in KRS 205.8451.~~

~~(4) "Immediate grave bodily harm" means the condition that would result from failure to provide emergency services for an emergency medical condition.~~

~~(5) "Irreparable harm" means a medical condition characterized by chronic illness or body impairment which may result from a failure to provide medical services on an immediate or emergency basis.~~

~~(6) "Life-threatening condition" means a medical condition which may result in the death of the individual unless medical services are provided on an immediate or emergency basis.~~

~~(7) "Lock-in" means as defined in 907 KAR 1:002.~~

~~(8) "Nonlife-threatening condition" means a medical condition which would not result in the death of the individual if medical services are not provided on an immediate or emergency basis.~~

~~(9) "Overutilization" means as defined in 907 KAR 1:002.~~

~~(10) "Provider" means as defined in KRS 205.8451.~~

~~(11) "Recipient abuse" means as defined in KRS 205.8451.~~

~~Section 2. Lock-in Program. (1) All complaints concerning possible recipient abuse or overutilization of Medicaid services by eligible recipients shall be referred to the department for investigation. A potential Medicaid Program abuser or overutilizer may be identified by:~~

~~(a) Caseworkers;~~

~~(b) Providers, including those that provide emergency services;~~

~~(c) The Attorney General's office;~~

~~(d) Hotline referrals;~~

~~(e) Surveillance and utilization review system reports showing utilization which exceeds a norm by at least a standard deviation; or~~

~~(f) Other staff or outside sources.~~

~~(2) If a recipient is identified as needing an overutilization review, an analysis shall be made of that recipient's utilization of Medicaid services. If the review reveals that an individual has utilization that may be warranted in view of the individual's medical diagnosis, complicating conditions and treatment regime, the review shall be closed.~~

~~(3) If the review reveals that an individual does not have a medical condition, complicating condition or treatment regime to warrant the individual's higher than normal utilization, a second level review and investigation shall be conducted to determine if the recipient has overutilized or abused the Medicaid Program.~~

~~(4) Recipient overutilization or abuse of the Medicaid Program may be:~~

~~(a) Intentional; or~~

~~(b) May result from a lack of knowledge by the recipient regarding the proper use of medical services.~~

~~(5) If overutilization or abuse is determined to be the result of a lack of recipient knowledge regarding proper use of medical services, a letter shall be sent to the recipient advising of:~~

~~(a) The dangers of inappropriate utilization of medical services; and~~

~~(b) The importance of having one (1) physician responsible for directing an individual's medical care.~~

~~(6) If the overutilization or abuse is determined to be intentional The department shall notify the recipient in writing of the pending lock-in action. The letter shall:~~

~~(a) Explain the right to a hearing regarding the proposed lock-in decision in accordance with Section 3 of this administrative regulation; and~~

~~(b) Inform recipient of the date their lock-in status shall be implemented, if a hearing is not requested.~~

~~(7) If a hearing is requested with regard to the proposed lock-in, action shall not be taken to lock the recipient in until a final hearing decision upholding the proposed lock-in action has been made.~~

~~(8) A recipient who has been identified as intentionally abusing or overutilizing the Medicaid Program based on an analysis of the recipient's medical history and utilization patterns shall be locked in to Medicaid providers including:~~

~~(a) A physician; and~~

~~(b) A pharmacy.~~

~~(9) The lock-in physician and pharmacy shall be selected by the department. The selected providers shall be accessible within~~

~~normal time and distance standards for the community in which the recipient lives.~~

~~(10) A recipient identified as abusing or overutilizing the program shall be locked in for a minimum of twelve (12) months. After the lock-in period, periodic determinations to be performed every twelve (12) months or more frequently, as needed, shall be made to:~~

~~(a) Determine the effectiveness of the lock-in; and~~

~~(b) Determine whether the lock-in status shall continue for another twelve (12) month period.~~

~~(11) Lock-in physicians shall serve as case managers for referrals to all health facilities and services, except for emergency services. A case management fee of ten (10) dollars shall be paid to the lock-in physician at the beginning of each month for each assigned lock-in recipient.~~

~~(12) Designated lock-in providers shall remain effective for twelve (12) months. Changes in lock-in providers shall be permitted only upon:~~

~~(a) The request of the lock-in provider;~~

~~(b) If the recipient moves out of the lock-in providers area;~~

~~(c) If the recipient can show that it is inappropriate for him to be locked-in to a specific provider;~~

~~(d) If the lock-in provider withdraws from the Medicaid Program; or~~

~~(e) For the convenience of the department.~~

~~(13) The department shall consider whether or not a physician has contributed to overutilization when determining the selection for a lock-in physician or pharmacist.~~

~~(14) Except as provided for in subsection (15) of this section, a Medicaid payment shall not be made on behalf of a lock-in recipient for the following:~~

~~(a) Physician services provided by other than the lock-in physician or other medical services or supplies which have not been preauthorized through a referral from the lock-in physician;~~

~~(b) Prescription drugs prescribed by other than the lock-in physician or a physician authorized by the lock-in physician;~~

~~(c) Pharmacy services provided by other than the lock-in pharmacy; or~~

~~(d) Emergency services provide for a nonlife-threatening condition or a condition that would not result in irreparable harm without prior approval of the lock-in provider, unless the provider has made a reasonable effort to obtain prior-approval from the lock-in provider.~~

~~(15) Emergency services may be provided to prevent the death, irreparable harm, immediate grave bodily harm, a life-threatening condition, or a permanent impairment of the recipient's health without prior approval of the lock-in provider.~~

~~(16) The recipient shall be issued a lock-in Medicaid identification card which specifies the designated lock-in providers and lock-in limitations.~~

~~Section 3. Appeal Rights. A recipient who receives advance notice of a decision to place him in lock-in status shall have the right to request a hearing in accordance with 907 KAR 1:563 prior to lock-in action by the department.~~

~~Section 4. Fraud and Abuse Referral. At any point if a determination is made that fraud, or abuse involving a substantial allegation or indication of fraud, has likely occurred, the recipient's case shall be referred for investigation in accordance with KRS 205.8453(3) and 205.8465.~~]

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brenda Parker or Lee Barnard (502) 564-9444, or Stuart Owen (502) 564-2015

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Program's lock-in provisions. The program locks recipients who have excessively utilized Medicaid services into receiving services from a few select providers. If the individual attempts to receive services from a provider who is not one of their lock-in providers, the Department for Medicaid Services (DMS) will not reimburse for the service except for emergency care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.8453 regarding utilization, fraud and abuse and to ensure that the funds allocated to Kentucky's Medicaid Program are properly expended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1), 205.520(3) and 205.8453 by establishing Medicaid lock-in requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1), 205.520(3) and 205.8453 by establishing Medicaid lock-in requirements. If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds hospitals (for nonemergency care) and controlled substance prescribers to the types of lock-in providers; establishes detailed lock-in criteria; establishes a lock-in referral form to be used by the recipient's designated primary care provider; and establishes a five (5) dollar payment per month for controlled substance prescribers. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce excessive Medicaid utilization in accordance with KRS 205.8453, 205.6310, and with 42 C.F.R. 431.54 and to implement pharmacy efficiencies as mandated by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 205.8453 and KRS 205.6310 by reducing excessive Medicaid utilization and to Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly by incorporating pharmacy efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 205.8453 and KRS 205.6310 by reducing excessive Medicaid utilization and with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly by incorporating pharmacy efficiencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who excessively utilize Medicaid services and providers who serve these Medicaid recipients will be affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including: List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Medicaid recipients who are locked in to certain providers will have to ensure that they only seek Medicaid services from their designated lock-in providers in order to ensure that DMS will pay for the services they received. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities identified in question (3). As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated individuals will have the benefit of appropriately utilizing Medicaid services. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS will experience a small costs due to the five (5) dollars a month payments to controlled substance prescribers; however, DMS projects that the amendment will reduce costs by $5 million (federal and state combined) annually.

(b) On a continuing basis: DMS will experience a small costs due to the $5 a month payments to controlled substance prescribers; however, DMS projects that the amendment will reduce costs by $5 million (federal and state combined) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.8453, 205.6310, Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly, and 42 C.F.R. 431.54.

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? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated for subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS foresees some administrative costs will be necessary to implement the changes; however, DMS projects saving approximately $5 million (federal and state funds combined) annually as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS foresees some administrative costs will be necessary to implement the changes; however, DMS projects saving approximately $5 million (federal and state funds combined) annually as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54.

2. State compliance standards. KRS 205.8453 states,

"It shall be the responsibility of the Cabinet for Health and Family Services and the Department for Medicaid Services to control recipient and provider fraud and abuse by:

(1) Informing recipients and providers as to the proper utilization of medical services and methods of cost containment;

(2) Establishing appropriate checks and audits within the Medicaid Management Information System to detect possible instances of fraud and abuse;

(3) Sharing information and reports with other departments within the Cabinet for Health and Family Services, the Office of the Attorney General, and any other agencies that are responsible for recipient or provider utilization review; and

(4) Instituting other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.6310 states,

"The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency;

(3) Reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;

(4) Except for emergency room services rendered to children under the age of six (6), prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment for a condition that does not meet the criteria established for a medical emergency; and

(5) The provisions of this section shall apply to any managed care program for Medicaid recipients."

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431.54 authorizes the locking in of recipients but requires the Medicaid agency to give recipients notice and a hearing opportunity prior to any lock-in action, requires that recipients have reasonable access to services and exempts emergency services from being locked in.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54. The amendment complies with the federal requirements established in 42 C.F.R. 431.54.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54 so one could argue that it is stricter as it is not mandatory. The amendment complies with the federal requirements established in 42 C.F.R. 431.54.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Emergency Amendment)

907 KAR 1:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 205.510(16), 205.565, 205.637, 205.638, 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), 1395ww(d)(5)(F), x(mm), 1396a, 1396b, 1396d, 1396r-4, Pub.L. 111-148

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(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 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 the method for determining the amount payable via a diagnosis-related group methodology by the Medicaid Program for a hospital inpatient service including provisions necessary to enhance reimbursement pursuant to KRS 142.303 and 205.638.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Adjustment factor" means the factor by which non-neonatal care relative weights shall be reduced to offset the expenditure pool adjustment necessary to enhance neonatal care relative weights.

(3) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(4) "Base rate" means the per discharge hospital-specific DRG rate for an acute care hospital that is multiplied by the relative weight to calculate the DRG base payment.

(5) "Base year" means the state fiscal year period used to establish DRG rates.

(6) "Base year Medicare rate components" means Medicare inpatient prospective payment system rate components in effect on October 1 during the base year as listed in the CMS IPPS Pricer Program.

(7) "Budget neutrality" means that reimbursements resulting from rates paid to providers under a per discharge methodology do not exceed payments in the base year adjusted for inflation based on the CMS Input Price Index, which is the wage index published by CMS in the Federal Register.

(8) "Budget neutrality factor" means a factor that is applied to a DRG base rate or the direct graduate medical educational payment so that budget neutrality is achieved.

(9) "Capital cost" means capital related expenses including insurance, taxes, interest and depreciation related to plant and equipment.

(10) "CMS" means the Centers for Medicare and Medicaid Services.

(11) "CMS IPPS Pricer Program" means the software program published on the CMS website of http://www.cms.hhs.gov which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(12) "Cost center specific cost-to-charge ratio" means a ratio of a hospital's cost center specific total hospital costs to its cost center specific total charges extracted from the Medicare cost report corresponding to the hospital full fiscal year falling within the base year claims date period.

(13) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(14) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and designated as a critical access hospital by the department.

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

(16) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(17) "Diagnostic categories" means the diagnostic classifications containing one or more DRGs used by Medicare programs, assigned in the base year with modifications established in Section 2(15) of this administrative regulation.

(18)[~~(17)~~] "Diagnostic related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(19)[~~(18)~~] "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(20)[~~(19)~~] "DRG average length of stay" means the Kentucky arithmetic mean length of stay for each DRG, calculated by dividing the sum of patient days in the base year claims data for each DRG by the number of discharges for each DRG.

(21)[~~(20)~~] "DRG base payment" means the base payment for claims paid under the DRG methodology.

(22)[~~(21)~~] "Enhanced neonatal care relative weight" means a neonatal care relative weight increased, with a corresponding reduction to non-neonatal care relative weights, to facilitate reimbursing neonatal care at 100 percent of Medicaid allowable costs in aggregate by category.

(23)[~~(22)~~] "Federal financial participation" is defined by[~~in~~] 42 C.F.R. 400.203.

(24)[~~(23)~~] "Fixed loss cost threshold" means the amount, equal to $29,000, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(25)[~~(24)~~] "Geometric mean" means the measure of central tendency for a set of values expressed as the nth (number of values in the set) root of their product. [~~(25) "GII" means Global Insight, Incorporated.~~]

(26) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(27) "High intensity level II neonatal center" means an in-state hospital with a level II neonatal center which:

(a) Is licensed for a minimum of twenty-four (24) neonatal level II beds;

(b) Has a minimum of 1,500 Medicaid neonatal level II patient days per year;

(c) Has a gestational age lower limit of twenty-seven (27) weeks; and

(d) Has a full-time perinatologist on staff.

(28) "High volume per diem payment" means a per diem add-on payment made to hospitals meeting selected Medicaid utilization criteria established in Section 2(12) of this administrative regulation.

(29) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; or

(b) Which is recognized by the Centers for Medicare and Medicaid Services as a hospital-acquired condition.

(30)[~~(29)~~] "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(31)[~~(30)~~] "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 based on changes in the CMS input price index.

(32)[~~(31)~~] "Intrahospital transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.

(33)[~~(32)~~] "Level I neonatal care" or "Level 1 DRG" means care provided to newborn infants of a more intensive nature than the usual nursing care provided in newborn care units, on the basis of physicians' orders and approved nursing care plans, which are assigned to DRGs 385-390.

(34)[~~(33)~~] "Level II neonatal center" means a facility with a licensed level II bed which provides specialty care (DRGs 675-680) for infants which includes monitoring for apnea spells, incubator or other assistance to maintain the infant's body temperature, and feeding assistance.

(35)[~~(34)~~] "Level III neonatal center" means a facility with a licensed level III bed which provides specialty care (DRGs 685-690) of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.

(36)[~~(35)~~] "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(37)[~~(36)~~] "Low intensity level III neonatal center" means a facility with fewer than four (4) licensed level III neonatal beds.

(38)[~~(37)~~] "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(39)[~~(38)~~] "Medical education costs" means direct and allowable costs that are:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(40)[~~(39)~~] "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(41) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(42)[~~(40)~~] "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(43)[~~(41)~~] "Pediatric teaching hospital" is defined in KRS 205.565(1).

(44)[~~(42)~~] "Per diem rate" means the per diem rate paid by the department for inpatient care in an in-state psychiatric or rehabilitation hospital, inpatient care in a long-term acute care hospital, inpatient care in a critical access hospital or psychiatric or rehabilitation services in an in-state acute care hospital which has a distinct part unit.

(45)[~~(43)~~] "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

(46)[~~(44)~~] "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(47)[~~(45)~~] "Rebase" means to redetermine base rates, DRG relative weights, per diem rates, and other applicable components of the payment methodology using more recent data.

(48)[~~(46)~~] "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(49)[~~(47)~~] "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges in the state paid under the DRG methodology for the same time period.

(50)[~~(48)~~] "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(51)[~~(49)~~] "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(C).

(52)[~~(50)~~] "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(53)[~~(51)~~] "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

(54)[~~(52)~~] "Trending factor" means the inflation factor as applied to that period of time between the midpoint of the base year and the midpoint of the universal rate year.

(55)[~~(53)~~] "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(56)[~~(54)~~] "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.

(57)[~~(55)~~] "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(58)[~~(56)~~] "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1) An in-state acute care hospital shall be paid for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 1:012, on a fully-prospective per discharge basis.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 1:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

(a) A DRG base payment;

(b) If applicable, a high volume per diem payment; and

(c) If applicable, a cost outlier payment amount.

(3)(a) In assigning a DRG for a claim, the department shall exclude from the DRG consideration any secondary diagnosis code associated with:

1. A hospital-acquired condition; or

2. A service associated with a never event.

(b) A DRG assignment for payment purposes shall be based on the Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.

(c)[~~in effect in the Medicare inpatient prospective payment system at the time of rebasing.~~

~~(b) For a rate effective June 16, 2008,~~] The department shall assign to the base year claims data, DRG classifications from Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.

(4) A DRG base payment shall be calculated for a discharge by multiplying the hospital specific base rate by the DRG relative weight.

(5)(a) The department shall determine a base rate by calculating a case mix, outlier payment and budget neutrality adjusted cost per discharge for each in-state acute care hospital as described in

subsections (5) through (10) of this section of this administrative regulation.

(b) A hospital specific cost per discharge used to calculate a base rate shall be based on base year inpatient paid claims data.

(c) [~~For a rate effective June 16, 2008,~~] A hospital specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data.

(6)(a) The department shall calculate a cost to charge ratio for the fifteen (15) Medicaid and Medicare cost centers displayed in paragraph (b) of this subsection.

(b) If a hospital lacks cost-to-charge information for a given cost center or if the hospital's cost-to-charge ratio is above or below three (3) standard deviations from the mean of a log distribution of cost-to-charge ratios, the department shall use the statewide geometric mean cost-to-charge ratio for the given cost center.

Table 1. Kentucky Medicaid Cost Center to Medicare Cost Report Cost Center Crosswalk

Kentucky Medicaid Cost Center	Kentucky Medicaid Cost Center Description	Medicare Cost Report Standard Cost Center
1	Routine Days	25
2	Intensive Days	26, 27, 28, 29, 30
3	Drugs	48, 56
4	Supplies or equipment	55, 66, 67
5	Therapy services excluding inhalation therapy	50, 51, 52
6	Inhalation therapy	49
7	Operating room	37, 38
8	Labor and delivery	39
9	Anesthesia	40
10	Cardiology	53, 54
11	Laboratory	44, 45
12	Radiology	41, 42
13	Other services	43, 46, 47, 57, 58, 59, 60, 61, 62, 63, 63.5, 64, 65, 68
14	Nursery	33
15	Neonatal intensive days	30

(7)(a) For a hospital with an intern or resident reported on its Medicare cost report, the department shall calculate allocated overhead by computing the difference between the costs of interns and residents before and after the allocation of overhead costs.

(b) The ratio of overhead costs for interns and residents to total facility costs shall be multiplied by the costs in each cost center prior to computing the cost center cost-to-charge ratio.

(8) For an in-state acute care hospital, the department shall compile the number of patient discharges, patient days and total charges from the base year claims data. The department shall exclude from the rate calculation:

(a) Claims paid under a managed care program;

(b) Claims for rehabilitation and psychiatric discharges reimbursed on a per diem basis;

(c) Transplant claims; and

(d) Revenue codes not covered by the Medicaid Program.

(9)(a) The department shall calculate the cost of a base year claim by multiplying the charges from each accepted revenue code by the corresponding cost center specific cost-to-charge ratio.

(b) The department shall base cost center specific cost-to-charge ratios on data extracted from the most recently, as of June 1, finalized cost report.

(c) Only an inpatient revenue code recognized by the department shall be included in the calculation of estimated costs.

(10) Using the base year Medicaid claims referenced in subsection (8) of this section of this administrative regulation, the department shall compute a hospital specific cost per discharge by dividing a hospital's Medicaid costs by its number of Medicaid discharges.

(11) The department shall determine an in-state acute care hospital's DRG base payment rate by adjusting the hospital's specific Medicaid allowable cost per discharge by the hospital's case mix, expected outlier payments and budget neutrality.

(a)1. A hospital's case mix adjusted cost per discharge shall be calculated by dividing the hospital's cost per discharge by its case mix index; and

2. The hospital's case mix index shall be equal to the average of its DRG relative weights for acute care services for base year Medicaid discharges referenced in subsection (8) of this section of this administrative regulation.

(b)1. A hospital's case mix adjusted cost per discharge shall be multiplied by an initial budget neutrality factor.

2. The initial budget neutrality factor for a rate shall be 0.7065 for all hospitals.

3. When rates are rebased, the initial budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.

(c)1. Each hospital's case mix and initial budget neutrality adjusted cost per discharge shall be multiplied by a hospital-specific outlier payment factor.

2. A hospital-specific outlier payment factor shall be the result of the following formula: ((expected DRG non-outlier payments) - (expected proposed DRG outlier payments))/(expected DRG non-outlier payments).

(d)1. A hospital's case mix, initial budget neutrality and outlier payment adjusted cost per discharge shall be multiplied by a secondary budget neutrality factor.

2. The secondary budget neutrality factor for a hospital shall be 1.0562.

3. When rates are rebased, the secondary budget neutrality factor shall be calculated so that total payments in the rate year shall be equal to total payments in the prior year plus inflation for the upcoming rate year and adjusted to eliminate changes in patient volume and case mix.

(12)(a) The department shall make a high volume per diem payment, except as excluded in paragraph (h) of this subsection, to an in-state acute care hospital with high Medicaid volume for base year covered Medicaid days referenced in subsection (8) of this section of this administrative regulation.

(b) High volume per diem criteria shall be based on the number of Kentucky Medicaid days or the hospital's Kentucky Medicaid utilization percentage.

(c)1. A high volume per diem payment shall be made in the form of a per diem add-on amount in addition to the DRG base payment rate encompassing the DRG average length-of-stay days per discharge.

2. The payment shall be equal to the applicable high volume per diem add-on amount multiplied by the DRG average length-of-stay associated with the claim's DRG classification.

(d)1. The department shall determine a per diem payment associated with Medicaid days-based criteria separately from a per diem payment associated with Medicaid utilization-based criteria.

2. If a hospital qualifies for a high volume per diem payment under both the Medicaid days-based criteria and the Medicaid utilization-based criteria, the department shall pay the higher of the two add-on per diem amounts.

(e) The department shall pay the indicated high volume per diem payment if either the base year covered Kentucky Medicaid inpatient days or Kentucky Medicaid inpatient day's utilization percent meet the criteria established in Table 2 below:

Table 2. High Volume Adjustment Eligibility Criteria

Kentucky Medicaid Inpatient Days		Kentucky Medicaid Inpatient Days Utilization	
Days Range	Per Diem Payment	Medicaid Utilization Range	Per Diem Payment
0 - 3,499 days	$0 per day	0.0% - 13.2%	$0.00 per day
3,500 - 4,499 days	$22.50 per day	13.3% - 16.1%	$22.50 per day
4,500 - 5,999 days	$45.00 per day	16.2% - 21.6%	$45.00 per day
6,000 - 7,399 days	$80.00 per day	21.7% - 27.2%	$81.00 per day
7,400 - 10,999 days	$118.15 per day	27.3% - 100.00%	$92.75 per day

11,000 - 19,999 days	$163.49 per day
20,000 and above days	$325.00 per day

(f) The department shall use base year claims data referenced in subsection (8) of this section of this administrative regulation to determine if a hospital qualifies for a high volume per diem add-on payment.

(g) The department shall only change a hospital's classification regarding a high volume add-on payment or per diem amount during a rebasing year.

(h)1. The department shall not make a high volume per diem payment for a level I neonatal care, level II neonatal center, or level III neonatal center claim.

2. A level I neonatal care, level II neonatal center, or level III neonatal center claim shall be included in a hospital's high volume adjustment eligibility criteria calculation established in paragraph (e), Table 2, of this subsection.

(13)(a) The department shall make an additional cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each diagnostic category.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge, for purposes of comparing the discharge cost to the outlier threshold, by multiplying the sum of the hospital specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2. A Medicare operating or capital-related cost-to-charge ratio shall be extracted from the CMS IPPS Pricer Program.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2. The fixed loss cost threshold shall equal $29,000.

(f) A cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(14) The department shall calculate a Kentucky Medicaid-specific DRG relative weight by:

(a)1. Selecting Kentucky base year Medicaid inpatient paid claims, excluding those described in subsection (8) of this section of this administrative regulation; and

2. [~~For a rate effective June 16, 2008,~~] A hospital-specific cost per discharge shall be calculated using state fiscal year 2006 inpatient Medicaid paid claims data;

(b)1. Reassigning the DRG classification for the base year claims based on the Medicare DRG in effect in the Medicare inpatient prospective payment system at the time of rebasing; and

2. [~~For a rate effective June 16, 2008,~~] The department shall assign to the base year claims data the Medicare grouper version 24 DRG classifications which were effective in the Medicare inpatient prospective payment system as of October 1, 2006;

(c) Removing the following claims from the calculation:

1. Claims data for a discharge reimbursed on a per diem basis including:

a. A psychiatric claim, defined as follows:

(i) An acute care hospital claim with a psychiatric DRG;

(ii) A psychiatric distinct part unit claim; and

(iii) A psychiatric hospital claim;

b. A rehabilitation claim, defined as follows:

(i) An acute care hospital claim with rehabilitation DRG;

(ii) A rehabilitation distinct part unit claim; and

(iii) A rehabilitation hospital claim;

c. A critical access hospital claim; and

d. A long term acute care hospital claim;

2. A transplant service claim as specified in subsection (21) of this section of this administrative regulation;

3. A claim for a patient discharged from an out-of-state hospital; and

4. A claim with total charges equal to zero;

(d) Calculating a relative weight value for a low volume DRG by:

1.a. Arraying a DRG with less than twenty-five (25) cases in order by the Medicare DRG relative weight in effect in the Medicare inpatient prospective payment system at the same time as the Medicare DRG grouper version, published in the Federal Register, relied upon for Kentucky DRG classifications; and

b. [~~For a rate effective June 16, 2008,~~] The department shall use the Medicare DRG relative weight which was effective in the Medicare inpatient prospective payment system as of October 1, 2006;

2. Grouping a low volume DRG, based on the Medicare DRG relative weight sort, into one (1) of five (5) categories resulting in each category having approximately the same number of Medicaid cases;

3. Calculating a DRG relative weight for each category; and

4. Assigning the relative weight calculated for a category to each DRG included in the category;

(e)1. Standardizing the labor portion of the cost of a claim for differences in wage and the full cost of a claim for differences in indirect medical education costs across hospitals based on base year Medicare rate components;

a. [~~For a rate effective June 16, 2008,~~] Base year Medicare rate components shall equal Medicare rate components effective in the Medicare inpatient prospective payment system as of October 1, 2005; and

b. Base year Medicare rate components used in the Kentucky inpatient prospective payment system shall include:

(i) Labor-related percentage and non-labor-related percentage;

(ii) Operating and capital cost-to-charge ratios;

(iii) Operating indirect medical education costs; or

(iv) Wage indices;

2.a. The department shall standardize costs using the following formula: standard cost = {((labor related percentage X costs)/Medicare wage index) + (nonlabor related percentage X costs)}/(1 + Medicare operating indirect medical education factor); and

b. [~~For a rate effective June 16, 2008,~~] The labor related percentage shall equal sixty-two (62) percent and the nonlabor related percentage shall equal thirty-eight (38) percent;

(f) Removing statistical outliers by deleting any case that is:

1. Above or below three (3) standard deviations from the mean cost per discharge; and

2. Above or below three (3) standard deviations from the mean cost per day;

(g) Computing an average standardized cost for all DRGs in aggregate and for each DRG, excluding statistical outliers;

(h) Computing DRG relative weights:

1. For a DRG with twenty-five (25) claims or more by dividing the average cost per discharge for each DRG by the statewide average cost per discharge; and

2. For a DRG with less than twenty-five (25) claims by dividing the average cost per discharge for each of the five (5) low volume DRG categories by the statewide average cost per discharge;

(i) Calculating, for the purpose of a transfer payment, Kentucky Medicaid geometric mean length of stay for each DRG based on the base year claims data used to calculate DRG relative weights;

(j) Employing enhanced neonatal care relative weights;

(k) Applying an adjustment factor to relative weights not referenced in paragraph (j) of this subsection to offset the level I, II, and III neonatal care relative weight increase resulting from the use of enhanced neonatal care relative weights; and

(l) Excluding high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal care relative weight calculations.

(15) The department shall:

(a) Separately reimburse for a mother's stay and a newborn's stay based on the diagnostic category assigned to the mother's stay and to the newborn's stay;

(b) Establish a unique set of diagnostic categories and relative weights for an in-state acute care hospital identified by the department as providing level I neonatal care, level II neonatal center care, or level III neonatal center care as follows:

1. The department shall exclude high intensity level II neonatal center claims and low intensity level III neonatal center claims from the neonatal center relative weight calculations;

2. The department shall reassign a claim that would have been

assigned to a Medicare DRG 385-390 to a Kentucky-specific:

a. DRG 675-680 for an in-state acute care hospital with a level II neonatal center; and

b. DRG 685-690 for an in-state acute care hospital with a level III neonatal center;

3. The department shall assign a DRG 385-390 for a neonatal claim from a hospital which does not operate a level II or III neonatal center; and

4.a. The department shall compute a separate relative weight for a level II, or III neonatal intensity care unit (NICU) neonatal DRG;

b. The department shall use base year claims from level II neonatal centers, excluding claims from any high intensity level II neonatal center, to calculate relative weights for DRGs 675-680; and

c. The department shall use base year claims from level III neonatal centers to calculate relative weights for DRGs 685-690.

(16) The department shall:

(a) Expend in aggregate by category (level I neonatal care, level II or III neonatal center care) and not by individual facilities:

1. A total expenditure for level I neonatal care projected to equal 100 percent of Medicaid allowable cost for the universal rate year;

2. A total expenditure for level II neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year; or

3. A total expenditure for Level III neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year;

(b) Adjust neonatal care DRG relative weights to result in:

1. Total expenditures for level I neonatal care projected to equal 100 percent of Medicaid allowable cost for the universal rate year;

2. Total expenditures for level II neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year; or

3. Total expenditures for level III neonatal center care projected to equal 100 percent of Medicaid allowable cost for the universal rate year; and

(c) Not cost settle reimbursement referenced in this subsection.

(17) The department shall reimburse an individual:

(a) Hospital which does not operate a level II or III neonatal center, for level I neonatal care at the statewide average Medicaid allowable cost per each level I DRG;

(b) Level II neonatal center for level II neonatal care at the average Medicaid allowable cost per DRG of all level II neonatal centers; or

(c) Level III neonatal center for level III neonatal care at the average Medicaid allowable cost per DRG of all level III neonatal centers.

(18) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(a) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

1. The department shall calculate an average daily rate by dividing the DRG base payment by the statewide Medicaid geometric mean length-of-stay for a patient's DRG classification.

2. If a hospital qualifies for a high volume per diem add-on payment in accordance with subsection (2) of this section, the department shall pay the hospital the applicable per diem add-on for the DRG average length-of-stay.

3. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(b) For a hospital receiving a transferred patient, the department shall reimburse the DRG base payment, and, if applicable, a high volume per diem add-on amount and a cost outlier payment amount.

(19) The department shall treat a transfer from an acute care hospital to a qualifying postacute care facility for selected DRGs in accordance with paragraph (b) of this subsection as a postacute care transfer.

(a) The following shall qualify as a postacute care setting:

1. A psychiatric, rehabilitation, children's, long-term, or cancer hospital;

2. A skilled nursing facility; or

3. A home health agency.

(b) A DRG eligible for a postacute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(4)(C)(i).

(c) The department shall pay each transferring hospital an average daily rate for each day of stay.

1. A payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

2. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay, up to the full DRG base payment.

3. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2 of this paragraph of this subsection shall receive twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer.

(d) The per diem amount shall be the base DRG payment allowed divided by the statewide Medicaid geometric mean length of stay for a patient's DRG classification.

(20) The department shall reimburse for an intrahospital transfer to or from an acute care bed to or from a rehabilitation or psychiatric distinct part unit:

(a) The full DRG base payment allowed; and

(b) The facility-specific distinct part unit per diem rate, in accordance with 907 KAR 1:815, for each day the patient remains in the distinct part unit.

(21)(a) The department shall reimburse for a kidney, cornea, pancreas, or kidney and pancreas transplant on a prospective per discharge method according to the patient's DRG classification.

(b) A transplant not referenced in paragraph (a) of this subsection shall be reimbursed in accordance with 907 KAR 1:350.

(22) The department shall adjust the non-neonatal care DRGs to result in the aggregate universal rate year reimbursement for all services (non-neonatal and neonatal) to equal the aggregate base year reimbursement for all services (non-neonatal and neonatal inflated by the trending factor.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG consideration any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not bill:

(a) A recipient for:

1. Treatment for or related to a hospital-acquired condition;

2. A never event; or

3. Treatment related to a never event;

(b) The Cabinet for Health and Family Services for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Cabinet for Health and Family Services;

2. A never event associated with a child in the custody of the Cabinet for Health and Family Services; or

3. Treatment related to a never event associated with a child in the custody of the Cabinet for Health and Family Services;

(c) The Department for Juvenile Justice for:

1. Treatment for or related to a hospital-acquired condition associated with a child in the custody of the Department for Juvenile Justice;

2. A never event associated with a child in the custody of the Department for Juvenile Justice; or

3. Treatment related to a never event associated with a child in

the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for:

(a) Treatment for or related to a hospital-acquired condition;

(b) A never event; or

(c) Treatment related to a never event.

(5)The department's treatment of never events, including hospital-acquired conditions, shall not affect the calculation of base rates or relative weights:

(a) Previously implemented by the department; or

(b) As described in Section 2 of this administrative regulation.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and

(2) Exclude a service furnished by a home health agency, a skilled nursing facility or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5.[~~4.~~] Direct Graduate Medical Education Costs at In-state Hospitals with Medicare-approved Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education costs is not provided to the department, pursuant to federal regulation or law, the department shall not reimburse for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall reimburse for the direct costs of a graduate medical education program approved by Medicare as follows:

(a) A payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis; and

(b) The department shall determine an annual payment amount for a hospital as follows:

1. The hospital-specific and national average Medicare per intern and resident amount effective for Medicare payments on October 1 immediately preceding the universal rate year shall be provided by each approved hospital's Medicare fiscal intermediary;

2. The higher of the average of the Medicare hospital-specific per intern and resident amount or the Medicare national average amount shall be selected;

3. The selected per intern and resident amount shall be multiplied by the hospital's number of interns and residents used in the calculation of the indirect medical education operating adjustment factor. The resulting amount shall be the estimated total approved direct graduate medical education costs;

4. The estimated total approved direct graduate medical education costs shall be divided by the number of total inpatient days as reported in the hospital's most recently finalized cost report on Worksheet D, Part 1, to determine an average approved graduate medical education cost per day amount;

5. The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program; and

6. Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 6.[~~5.~~] Budget Neutrality Factors. (1) When rates are rebased, estimated projected reimbursement in the universal rate year shall not exceed payments for the same services in the prior year adjusted for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index[~~using the inflation factor prepared by GII for the universal rate year and adjusted for changes in patient utilization~~].

(2) The estimated total payments for each facility under the reimbursement methodology in effect in the year prior to the universal rate year shall be estimated from base year claims.

(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated from base year claims.

(4) If the sum of all the acute care hospitals' estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals' adjusted estimated payments under the prior year's reimbursement methodology, each hospital's DRG base rate and per diem rate shall be multiplied by a uniform percentage to result in estimated total payments for the universal rate year being equal to total adjusted payments in the year prior to the universal rate year.

Section 7.[~~6.~~] Reimbursement Updating Procedures. (1) For rate years between rebasing periods, the department shall annually, on July 1, update the hospital-specific base rates for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index from the midpoint of the previous rate year to the midpoint of the universal rate year [~~use the inflation factor prepared by GII for the universal rate year to inflate a hospital-specific base rate for rate years between rebasing periods~~].

(2) Except for an appeal in accordance with Section 21[~~20~~] of this administrative regulation, the department shall make no other adjustment.

(3) The department shall rebase DRG reimbursement rates on July 1, 2012 and every fourth year after that[~~every four (4) years~~].

Section 8.[~~7.~~] Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 9.[~~8.~~] Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of each 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 required by this subsection.

(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.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, 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 to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 10.[~~9.~~] Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. 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) 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, subject to the limi-

tations of subparagraphs 1 and 2 of this paragraph..

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. 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 11.[~~10.~~] Trending of a Cost Report for DRG Re-basing Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or unaudited, shall be trended to the beginning of the universal rate year to update a hospital's Medicaid cost.

(2) The department shall trend for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index[~~use the inflation factor prepared by GII as the trending factor for the period being trended~~].

Section 12.[~~11.~~] 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 trend for inflation based on changes in the Price Index Levels in the CMS IPPS Hospital Input Price Index[~~use the inflation factor prepared by GII as the indexing factor for the universal rate year~~].

Section 13.[~~12.~~] Readmission. (1) An inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for a readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 14.[~~13.~~] Reimbursement for Out-of-state Hospitals. (1) The department shall reimburse an acute care out-of-state hospital, except for a children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, for inpatient care:

(a) On a fully-prospective per discharge basis based on the patient's diagnostic category; and

(b) An all-inclusive rate.

(2) The all-inclusive rate referenced in subsection (1)(b) of this section of this administrative regulation shall:

(a) Equal the facility-specific Medicare base rate multiplied by:

1. 0.7065; and

2. The Kentucky-specific DRG relative weights after the relative weights have been reduced by twenty (20) percent;

(b) Exclude:

1. Medicare indirect medical education cost or reimbursement;

2. High volume per diem add-on reimbursement;

3. Disproportionate share hospital distributions; and

4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638; and

(c) Include a cost outlier payment if the associated discharge meets the cost outlier criteria established in Section 2(13) of this administrative regulation.

1. The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim.

2. The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

3. The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year; and

4. The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge's outlier threshold.

(3) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, an all-inclusive rate equal to the average all-inclusive base rate paid to in-state children's hospitals.

(4) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center at the Medicare operating and capital-related cost-to-charge ratio, extracted from the CMS IPPS Pricer Program in effect at the time the care was provided, multiplied by eighty-five (85) percent. For example, if care was provided on September 13, 2008, the cost-to-charge ratio used shall be the cost-to-charge ratio extracted from the CMS IPPS Pricer Program in effect on September 13, 2008.

(5) An out-of-state provider shall not be eligible to receive high volume per diem add-on payments, indirect medical education reimbursement or disproportionate share hospital payments.

(5) The department shall make a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to Quality Improvement Organization review and approval.

(a) The department shall determine the cost outlier threshold for an out-of-state claim using the same method used to determine the cost outlier threshold for an in-state claim.

(b) The department shall calculate the estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

(c) The department shall use the Medicare operating and capital-related cost-to-charge ratios published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.

(d) The outlier payment amount shall equal eighty (80) percent of the amount which estimated costs exceed the discharge's outlier threshold.

Section 15.[~~14.~~] Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:

a. Equal to the difference between payments made in accordance with Sections 2, 4, and 5[~~2, 3, and 4~~] of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined with no end of the year settlement; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qual-

ifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271.

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2, 4, and 5[~~2, 3, and 4~~] of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. $7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds;

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System; and

(d) Make a supplemental payment to an in-state high intensity level II neonatal center of $2,870 per paid discharge for a DRG 675 - 680.

(4) An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the facility.

(5) For the purpose of this section, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 1:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 16.[~~15.~~] Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned or operated hospital the full cost of an inpatient service via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(2) To determine the amount of costs eligible for a CPE, a 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 costs remains, the department shall reconcile any difference with the provider.

Section 17.[~~16.~~] 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; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 18.[~~17.~~] 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)(a) 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.

(b) 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; and

(e) Require each provider to submit a cost report for the period:

1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and

2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 8 of this administrative regulation.

Section 19.[~~18.~~] Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision[~~A provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision~~].

Section 20.[~~19.~~] Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 21.[~~20.~~] Appeals. (1) An administrative review shall not be available for the following:

(a) A determination of the requirement, or the proportional amount, of a budget neutrality adjustment in the prospective payment rate; or

(b) The establishment of:

1. Diagnostic related groups;

2. The methodology for the classification of an inpatient discharge within a DRG; or

3. An appropriate weighting factor which reflects the relative hospital resources used with respect to a discharge within a DRG.

(2) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671.

Section 22.[~~21.~~] 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; and

(c) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009 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: July 1, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Hunter or Darlene Burgess (502) 564-5707 or Stuart Owen (502) 564-2015

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for inpatient hospital acute care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program's reimbursement for inpatient hospital acute care as required by 42 U.S.C. 1396d(a)(1) and KRS 205.560.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program's reimbursement for inpatient hospital acute care as required by 42 U.S.C. 1396d(a)(1) and KRS 205.560.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program's reimbursement for inpatient hospital acute care as required by 42 U.S.C. 1396d(a)(1) and KRS 205.560.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates Medicaid reimbursement of care related to conditions acquired by patients in a hospital unrelated to the condition for which the patient was admitted to the hospital and care associated with events which never should have happened. The policy only applies to acute care hospitals as the Centers for Medicare and Medicaid Services (CMS) exempts miscellaneous other hospital types from the policy. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with guidance from the Centers for Medicare and Medicaid Services (CMS). The amendment is also necessary to provide a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem - while in the hospital - unrelated to the patient's admitting problem.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment - which addresses Medicaid inpatient hospital reimbursement - conforms with KRS 194A030(2) which establishes the Department for Medicaid Services as the singles state agency authorized to administer Title XIX of the Social Security Act. The amendment also confirms with KRS 194A.050(1) which charges the Cabinet for Health and Family Services secretary to "adopt administrative regulations necessary under applicable laws to protect, develop, and maintain the health of the individual citizens of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is expected to assist in the effective administration of KRS 194A.050(1) by providing a substantial incentive to hospitals to ensure that they avoid putting patients at risk of acquiring a medical problem - while in the hospital - unrelated to the patient's admitting problem.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 65 acute care hospitals 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. No compliance action is mandated; however, acute care hospitals will not be reimbursed for treatment of a condition a patient acquires - unrelated to their admitting condition - while in the hospital or for care associated with a never event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The Department for Medicaid Services (DMS) hopes that the incidence rate of hospital-acquired conditions and never events will drop as a result of the amendment; thus, benefiting inpatient hospital patients.

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

(a) Initially: The Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(b) On a continuing basis: DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment and any hospital owned by local government could be affected if patients in the hospital acquire conditions - while in the hospital - unrelated to the medical condition for which they sought treatment in the hospital.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), KRS 205.560(2), 42 U.S.C. 1396a(a)(10), 1396d(a)(1), Pub.L. 111-148 (Section 2702), 42 U.S.C. 1395ww(d)(4)(D), 42 C.F.R. 447.253, 447.272 and 447.250.

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? DMS antic-

ipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? As a result of the amendment, DMS will experience minimal administrative cost in the form of Medicaid Management Information System (MMIS) programming changes. Conversely, the Department for Medicaid Services (DMS) projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated for subsequent years. DMS projects that the amendment will reduce expenditures by approximately $300,000 (state and federal shares combined) annually.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 111-148 (Section 2702), 42 U.S.C. 1395ww(d)(4)(D), 42 C.F.R. 447.253, 42 C.F.R. 447.272 and 42 C.F.R. 447.250.

2. State compliance standards. KRS 205.560(2) states, "(2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

a. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 C.F.R. 447.253(b)(1), State Medicaid programs must reimburse for inpatient hospital services "through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards."

3. Pursuant to 42 C.F.R. 447.253(b)(2), State Medicaid programs reimbursement for inpatient hospitals must "not exceed the upper payment limits as specified in 42 C.F.R. 447.272."

Pursuant to 42 C.F.R. 447.253(c), "In determining payment when there has been a sale or transfer of the assets of a hospital, the state's methods and standards must provide that payment rates can reasonably be expected not to increase in the aggregate solely as a result of changes of ownership, more than the payments would increase under Medicare under 413.130, 413.134, 413.153, and 413.157 of this chapter, insofar as these sections affect payments for depreciation, interest on capital indebtedness, return on equity capital (if applicable), acquisition costs for which payments were previously made to prior owners, and the recapture of depreciation."

Pub.L. 111-148, Section 2702 states, "(a) IN GENERAL. The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall identify current State practices that prohibit payment for health care acquired conditions and shall incorporate the practices identified, or elements of such practices, which the Secretary determines appropriate for application to the Medicaid program in regulations. Such regulations shall be effective as of July 1, 2011, and shall prohibit payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations. The regulations shall ensure that the prohibition on payment for health care-acquired conditions shall not result in a loss of access to care or services for Medicaid beneficiaries."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment regarding hospital-acquired conditions has been mandated to become effective July 1, 2011 and is currently "encouraged" by the Centers for Medicare and Medicaid Services (CMS) via a letter to state Medicaid directors numbered "SMDL 08-004."

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal guidance.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amendment)

907 KAR 3:090. Acquired brain injury waiver services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441.300 - 310, 42 C.F.R. 455.100 - 106,[~~42 C.F.R. 441 Subpart G, 455 Subpart B,~~] 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3)

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 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services' Division of Community Alternatives.

(5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance, or another acute medical incident.

(6)[~~(5)~~] "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351;

(b) Submitted to the department:

1. For a level of care determination; and

2. No less than every twelve (12) months thereafter.

(7)[~~(6)~~] "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(8)[~~(7) "BISB" or "brain injury service branch", Division of Long Term Care and Community Alternatives, Cabinet for Health and Family Services means the brain injury service branch.~~

~~(8)~~] "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan

of care.

(9) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(10) "Budget allowance" is defined by KRS 205.5605(1).

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's plan of care.

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

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

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

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

(14) "Covered services and supports" is defined by KRS 205.5605(3).

(15) "Crisis prevention and response plan" means a plan developed by an interdisciplinary team to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(16) "DCBS" means the Department for Community Based Services.

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

(18) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(19) "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(20) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI[~~ABI's~~] recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(21) "Level of care certification" means verification, by the department, of ABI program eligibility for:

(a) An individual; and

(b) A specific period of time.

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

(23)[~~(22)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

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

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

(26)[~~(25)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(27)[~~(26)~~] "Patient liability" means the financial amount, determined by the department, that an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(28) "Personal services agency" is defined by KRS 216.710(8).

(29)[~~(27)~~] "Psychologist" is defined by KRS 319.010(8).

(30)[~~(28)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(31)[~~(29)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(32)[~~(30)~~] "Representative" is defined by KRS 205.5605(6).

(33)[~~(31)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(34)[~~(32)~~] "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(35)[~~(33)~~] "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(36)[~~(34)~~] "Transition plan" means a plan that is developed by an interdisciplinary team to aid an ABI recipient in exiting from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671[~~, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions~~];

(b) Be certified by the department prior to the initiation of the service;

(c) Be recertified at least annually by the department; [~~and~~]

(d) Have an office within the commonwealth of Kentucky; and

(e) Complete and submit a MAP-4100a to the department.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:672[~~, Provider enrollment, disclosure, and documentation for Medicaid participation~~];

(b) 907 KAR 1:673[~~, Claims processing~~]; and

(c) 902 KAR 20:078[~~, Operations and services; group homes~~].

(3) An ABI provider shall have a governing body that shall be:

(a) a legally-constituted entity within the Commonwealth of Kentucky; and

(b) responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an ABI recipient for whom the ABI provider cannot meet the service needs; and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. 1320d to 1320d-8.

(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal repre-

sentative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which the rights may be exercised, including:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions; and

3. For supervised residential care[~~a residential~~], personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. Part 35); and

(d) Prohibiting the use of:

1. Prone or supine restraint;

2. Corporal punishment;

3. Seclusion;

4. Verbal abuse; or

5. Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility.

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:

(a) Department;

(b) ABI recipient's selected case manager;

(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee;

(f) Office of the Attorney General or its designee; or

(g) Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines [~~in~~]between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry; and

(d) Contain the following specific information:

1. The ABI recipient's name[~~, Social Security number~~] and Medical Assistance Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The plan of care, MAP-109;

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information as provided by law;

(f) Be secured against loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:

(a)1. Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

2. Maintain, for existing staff, documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test described in subparagraph 1 of this paragraph;

3. Ensure that an employee or volunteer who tests positive for TB or has history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

4. Before allowing a staff person or volunteer determined to have signs or symptoms of active disease to work, ensure that follow-up testing is administered by a physician with the test results indicating the person does not have active TB disease; and

5. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present.[~~staff person or volunteer performing direct care or a supervisory function has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and~~

~~2. Maintain documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;~~]

(b) For each potential employee or volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts or equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100; and

c. Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment; and

2. Within thirty (30) days of the date of hire or date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470;

(c) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not permit an employee or volunteer to transport an ABI recipient if the employee or volunteer has a conviction of Driving Under the Influence (DUI) during the past year;

(e) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse, neglect or exploitation;

(g) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry;

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

(i) Evaluate and document the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(j) Conduct and document periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a supervised residential care or adult day training [~~residential or structured day~~] provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensuring that staff who supervise medication administration[~~administering medication~~]:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, time of administration, and the recipient's name[~~and time~~] if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Establish policies[~~policy~~] and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when an ABI recipient is asleep;

(c) Mandate that:

1. The result of an evacuation drill be evaluated and modified as needed; and

2. Results of the prior year's evacuation drill be maintained on site[~~to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and~~

~~(c) Mandate that the result of an evacuation drill be evaluated and modified as needed~~].

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with an ABI recipient which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes at least six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2,000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services;

3. A speech-language pathologist providing speech therapy; or

4. A board certified behavior analyst; and

(f) Ensure that prior to the date of service as a volunteer, an individual receive training which shall include:

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer will provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by the provider.

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an indi-

vidual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; [~~and~~]

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that [~~include highly restrictive procedures or~~] contain human rights restrictions; and

4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:

1. Within thirty (30) days of the recipient's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program:

(a) An individual shall:

1. Be at least eighteen (18) years of age;

2. Have acquired a brain injury of the following nature, to the central nervous system:

a. An injury from physical trauma;

b. Damage from anoxia or from a hypoxic episode; or

c. Damage from an allergic condition, toxic substance, or another acute medical incident; and

3. Apply to be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(b) A case manager or support broker, on behalf of an applicant, shall submit a certification packet to the department containing the following[~~be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;~~

~~(b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;~~

~~(c) n application packet containing the following shall be submitted by a support broker on behalf of the applicant~~]:

1. A copy of the allocation letter;

2. An Assessment form - MAP-351;

3. A statement for the need for ABI waiver[~~long term care~~] services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10;

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(c)[~~(d)~~] An individual shall Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(d)[~~(e)~~] An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(e)[~~(f)~~] An individual shall meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(f)[~~(g)~~] An individual shall receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability; or

(b) Receiving a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility patient status[~~level of care~~] criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISB, and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C, if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Discharged[~~Terminated~~] from the ABI waiver program;

(c) Temporarily discharged from the ABI waiver program;

(d) Admitted to a nursing facility; [~~or~~]

(e) Changing the primary provider; or

(f) Changing case management agency.

(8) The department may exclude an individual from receiving ABI waiver services if the projected cost of ABI waiver services for the individual is reasonably expected to exceed the cost of nursing facility services for the individual[~~an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service~~].

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(e) An ABI recipient is no longer able to be safely served in the community; [~~or~~]

(f) The ABI recipient has reached maximum rehabilitation potential; or

(g) An ABI recipient is no longer actively participating in services within the approved plan of care as determined by the interdisciplinary team.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice to the department, the ABI recipient or legal representative and the case manager at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address and telephone number of each current ABI provider in the state;

2. Provide assistance to the ABI recipient in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the ABI recipient or legal representative;

5. Ensure the health, safety and welfare of the ABI recipient until an appropriate placement is secured; and

6. Provide assistance to ensure a safe and effective service transition.

(11) Voluntary termination and loss of an ABI waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall:

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall:

1. Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop an individualized plan of care and update it as necessary based on changes in the recipient's medical condition and supports;

4. Include monitoring of the delivery of services and the effectiveness of the plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c. Include the ABI Plan of Care form - MAP-109 being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, updated thirty (30) days prior to discharge, and [~~updated as changes or recertification occurs, and~~] shall include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency;

b. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

g. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

h. Shall assist an ABI recipient in planning resource use and assuring protection of resources;

i.(i) Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence; and

(ii) For an ABI recipient receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the ABI recipient's supervised residential care provider site;

j. [~~Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis;~~

~~k.~~] Shall ensure twenty-four (24) hour availability of services; and

k.[~~l.~~] Shall ensure that the ABI recipient's health, welfare, and safety needs are met; and

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved plan of care;

c. The date of the service;

d. Beginning and ending time; [~~and~~]

e. The signature[~~, date of signature~~] and title of the individual providing the service; and

f. A quarterly summary which shall include:

(i) Documentation of monthly contact with each chosen ABI provider; and

(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care and of the effectiveness of the plan of care;

(b) Behavior programming which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. Reports involved in implementing the behavioral service plan; and

c. A monthly summary which assesses the participant's status related to the plan of care;

6. Be provided by a behavior specialist who shall:

a.(i) Be a psychologist;

(ii) Be a psychologist with autonomous functioning;

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

(vii) Be an advanced registered nurse practitioner (ARNP);

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature[~~, date~~] and title of the behavioral specialist; [~~and~~

~~d. A summary of data analysis and progress of the individual toward meeting goals of the services;~~]

(c) Companion services which shall:

1. Include a nonmedical service, supervision or socialization as indicated in the recipient's plan of care;

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved plan of care which are therapeutic and not diversional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

7. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~]; and

8. Be provided by:

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

b. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department;

c. [~~A group home licensed and operating in accordance with 902 KAR 20:078;~~

~~d.~~] A community habilitation program certified by the department; or

d. A supervised residential care provider;

(d) Supervised residential care level I, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;

4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5 of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;

5. May include the provision of up to five (5) unsupervised hours per day per recipient if the provider develops an individualized plan for the recipient to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the recipient's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the recipient's status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in

the recipient's plan of care;

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(e) Supervised residential care level II, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;

4. Shall provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the recipient's needs;

b. Be approved by the recipient's treatment team; and

c. Be documented in the recipient's plan of care which shall also contain periodic reviews and updates based on changes, if any, in the recipient's status;

5. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

7. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

8. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

9. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

10. Shall include provision of twenty-four (24) hour on-call support;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(f) Supervised residential care level III, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. May be provided in a single family home, duplex or apartment building to an ABI recipient who lives alone or with an unrelated roommate;

4. Shall not be provided to more than two (2) ABI recipients simultaneously in one (1) apartment or home;

5. Shall not be provided in more than two (2) apartments in one (1) building;

6. Shall, if provided in an apartment building, have staff:

a. Available twenty-four (24) hours per day and seven (7) days per week; and

b. Who do not reside in a dwelling occupied by an ABI recipient;

7. Shall provide less than twelve (12) hours of supervision or support in the residence based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the recipient's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the recipient's status;

8. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

9. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

10. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

13. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service;

d. The signature and title of the individual providing the service; and

e. Evidence of at least one (1) daily face-to-face contact with the ABI recipient;

14. Shall not include the cost of room and board;

15. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

16. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

17. Shall not utilize a motor home;

18. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

19. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(g)[~~e. A staffed residence certified by the department;~~

~~(d) Community residential services which shall:~~

~~1. Include twenty-four (24) hour supervision in:~~

~~a. A community mental health center licensed and operating in accordance with 902 KAR 20:091;~~

~~b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or~~

~~c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;~~

~~2. Not include the cost of room and board;~~

~~3. Be available to an ABI recipient who:~~

~~a. Does not reside with a caregiver;~~

~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or~~

~~c. Demonstrates behavior that may result in potential legal problems if not ameliorated;~~

~~4. Utilize a modular home only if the:~~

~~a. Wheels are removed;~~

~~b. Home is anchored to a permanent foundation; and~~

~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~

~~5. Not utilize a motor home;~~

~~6. Provide a sleeping room which ensures that an ABI recipient:~~

~~a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;~~

~~b. Does not share a room with an individual who presents a potential threat; and~~

~~c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;~~

~~7. Provide assistance with daily living skills which shall include:~~

~~a. Ambulating;~~

~~b. Dressing;~~

~~c. Grooming;~~

~~d. Eating;~~

~~e. Toileting;~~

~~f. Bathing;~~

~~g. Meal planning, grocery shopping and preparation;~~

~~h. Laundry;~~

~~i. Budgeting and financial matters;~~

~~j. Home care and cleaning;~~

~~k. Social skills training;~~

~~l. Reduction or elimination of a maladaptive behavior;~~

~~m. Instruction in leisure skills; and~~

~~n. Instruction in self medication;~~

~~8. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care;~~

~~9. Provide or arrange for transportation to services, activities; or medical appointments as needed;~~

~~10. Include participation in medical appointments and follow-up care as directed by the medical staff; and~~

~~11. Be documented by a detailed staff note which shall include:~~

~~a. Progress toward goal and objectives identified in the approved plan of care;~~

~~b. The date of the service;~~

~~c. Beginning and ending time; and~~

~~d. The signature, date and title of the individual providing the service;~~]

~~(e)~~] Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) ABI recipients[~~a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes~~]; and

b. Included in the recipient's approved plan of care for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced registered nurse practitioner (ARNP); or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

10. Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date of signature~~] and title of the individual providing the service;

(h)[~~(f)~~] Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupation therapist in accordance with 201 KAR 28:130; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(i)[~~(g)~~] Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20:081;

c. A personal services agency; or

d. An ABI provider;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service; and

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services;~~]

(j)[~~(h)~~] A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Supervised residential care provider; or

e. [~~Group home agency;~~

~~e. Staffed residence agency; or~~

~~f.~~] Community habilitation program;

3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. Be limited to 336 hours in a twelve (12) month [~~168 hours in a six (6) month~~]period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~];

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c.[~~b.~~] The beginning and ending time; and

d.[~~c.~~] The signature[~~, date of signature~~] and title of the individual providing the service;

(k)[~~(i)~~] Speech, hearing and language services which shall be:

1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of func-

tioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech language pathologist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(l) Adult day training[~~(j) Structured day program~~] services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20:066;

b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20:190;

c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

d. A community habilitation program;

e. A sheltered employment program; or

f. A therapeutic rehabilitation program;

2. [~~Be to~~]Rehabilitate, retrain and reintegrate an individual into the community;

3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;

4. Include the following services:

a. Social skills training related to problematic behaviors identified in the recipient's plan of care;

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with an ABI waiver service recipient's overall approved plan of care;

7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;

8. Be appropriate:

a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;

b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and

c. According to the approved plan of care and be therapeutic in nature and not diversional;

9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's plan of care;

10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;

11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time; [~~and~~]

d. The signature[~~, date~~] and title of the individual providing the service; and

e. A monthly summary that assesses the participant's status related to the approved plan of care;

(m)[~~(k)~~] Supported employment which shall be:

1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided by a:

a. Supported employment provider;

b. Sheltered employment provider; or

c. Structured day program provider;

3. Provided one-on-one;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI recipient's file;

5. Limited to forty (40) hours per week alone or in combination with structured day services;

6. An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;

7. Exclusive of work performed directly for the supported employment provider; and

8. Documented by a time and attendance record which shall include:

a. Progress towards the goals and objectives identified in the plan of care;

b. The date of service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(n)[~~(l)~~] Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an ABI recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 and include three (3) estimates for vision and hearing;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision or hearing programs;

6. Not be necessary for life support;

7. Meet applicable standards of manufacture, design and installation; and

8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; [~~or~~]

(o)[~~(m)~~] Environmental modifications which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to an ABI recipient if:

a. Ordered by a physician;

b. Prior-authorized by the department[~~BISB~~];

c. Submitted on a Request for Equipment form - MAP-95 by a case manager or support broker;

d. Specified in an ABI recipient's approved plan of care;

e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and

f. Without the modification, the ABI recipient would require institutionalization;

3. Not include a vehicle modification[~~or an electronic monitoring system~~];

4. Be limited to no more than $2,000 for an ABI recipient in a twelve (12) month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(p) An assessment which shall:

1. Be a comprehensive assessment which shall identify:

a. An ABI waiver recipient's needs; and

b. Services that an ABI recipient's family cannot manage or arrange for the recipient;

2. Evaluate an ABI waiver recipient's physical health, mental health, social supports, and environment;

3. Be requested by:

a. An individual requesting ABI waiver services;

b. A family member of the individual requesting ABI services; or

c. A legal representative of the individual requesting ABI services;

4. Be conducted:

a. By an ABI case manager or support broker; and

b. Within seven (7) calendar days of receipt of the request for an assessment;

5. Include at least one (1) face-to-face contact between the assessor and the ABI waiver recipient:

a. And, if appropriate, the recipient's family; and

b. In the ABI waiver recipient's home;

6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; or

(g) A reassessment:

1. Which shall be performed at least once every twelve (12) months;

2. Which shall be conducted:

a. Using the same procedures as for an assessment; and

b. By an ABI case manager or support broker;

3. The results of which shall be submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

4. Which shall not be reimbursable if the individual no longer meets ABI program eligibility requirements; and

5. Which shall not be retroactive.

Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

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

(2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;

(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;

(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;

(5) A birth defect;

(6) Mental retardation without an etiology to an acquired brain injury;

(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or

(8) Determination that the recipient has met his or her maximum rehabilitation potential.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents as follows:

(a) A Class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A Class II incident which shall:

1.a. Be serious in nature; or

b. Include a medication error;[~~or~~

~~c. Involve the use of a physical or chemical restraint;~~]

2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager or support broker; and

3. Be reported to the following by the provider agency:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. BISB within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect or exploitation;

c. Involve a medication error which requires a medical intervention or hospitalization;

d. Be an admission to an acute or psychiatric hospital;

e. Involve the use of a chemical or physical restraint; or

f.[~~or~~

~~d.~~] Be a death;

2. Be Immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB, within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB shall occur on the following business day.

(3) The following documentation with a complete written report shall be submitted for a death:

(a) A current plan of care;

(b) A current list of prescribed medications including PRN medications;

(c) A current crisis plan;

(d) Medication Administration Review (MAR) forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department;

(g) A coroner's report; and

(h) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual of age eighteen (18) years or older[~~between the age of twenty-one (21) to sixty-five (65) years of age~~]applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services form - MAP-10.

(3) The order of placement on the ABI waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services form - MAP-10 and by category of need.

(4) The ABI waiting list categories of need shall be emergency or nonemergency.

(5) To be placed in the emergency category of need, an individual shall be determined by the emergency review committee to meet the emergency category criteria established in subsection (8) of this section.

(6) The emergency review committee shall:

(a) Be comprised of three (3) individuals from the department:

1. Who shall each have professional or personal experience with brain injury or cognitive disabilities; and

2. Two (2) of whom shall not be supervised by the branch manager of the department's acquired brain injury branch;

(b) Meet during the fourth (4th) week of each month to review and consider applications for the acquired brain injury waiver program to determine if applicants meet the emergency category of need criteria established in subsection (8) of this subsection;

(7) A completed Acquired Brain Injury Waiver Services Program Application form - MAP-26 and an Acquired Brain Injury Waiver Services form - MAP-10 for an ABI waiting list applicant shall be submitted to the department no later than three (3) business days prior to fourth (4th) week of each month in order to be considered by the emergency review committee during that month's emergency review committee meeting.

(8) An applicant shall meet emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of

significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) An applicant who does not meet the emergency category of need criteria established in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.

(10)[of the individual as follows:

(a) Emergency. An immediate service is indicated as determined by:

1. The individual currently is demonstrating behavior related to his or her acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or

2. The individual is demonstrating behavior related to his or her acquired brain injury which has resulted in his or her arrest; or

(b) Nonemergency.

(4)] In determining chronological status of an applicant, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services form - MAP-10 shall be maintained and not change if an individual is moved from one (1) category of need to another.

(11)[(5)] A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12)[(6)] Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(13)[(7)] If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(14)[(8)] A written notification of placement on the waiting list shall be mailed to the individual or his or her legal representative and case management provider if identified.

(15)[(9)] Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual and his or her legal representative and also the ABI case manager; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(16)[(10)] Reassignment of an applicant's category of need shall be completed based on the updated information and validation process.

(17)[(11] An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time that an individual's status changes.

(18)[(12] An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(19)[(13] If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or individual's legal representative and the ABI case manager.

(20)[(14)] The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(21)[(15)] Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI recipient participating in CDO shall include:

(a) Home and community support services;

(b) Community day support services;

(c) Goods or services; or

(d) Financial management.

(2) A home and community support service [which] shall:

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals;

(d)[and] Not be diversional in nature;

(e)[(d)] Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(f)1.[(e)1.] Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(3) A community day support service shall:

(a) Be available only under the consumer-directed option;

(b) Be provided in a community setting;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for:

1. Work;

2. Community activities;

3. Socialization;

4. Leisure; or

5. Retirement activities; and

(f) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(4) Goods or services shall:

(a) Be individualized;

(b) Be utilized to:

1. Reduce the need for personal care; or

2. Enhance independence within the consumer's home or community;

(c) Not include experimental goods or services; and

(d) Not include chemical or physical restraints.

(5)[(2)] To be covered, a CDO service shall be specified in a consumer's plan of care.

(6)[(3)] Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(7)[(4)] A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(8)[(5)] A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

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

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(9)[~~(6)~~] A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(10)[~~(7)~~] The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists;

(b) The recipient's plan of care indicates he or she requires more hours of service than the program can provide, thus jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present; or

(c) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(11)[~~.~~

~~(8)~~] The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(12)[~~(9)~~] Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

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

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional ABI services.

(13)[~~(10)~~] Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(14)[~~(11)~~] A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(15)[~~(12~~] A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(16)(a)[~~(13)(a)~~] The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; [~~and~~]

3. Protection of the consumer's health, safety, and welfare; and

4. A significant change has occurred in the recipient's:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the recipient's relocation.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(17)[~~(14)~~] Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(18)[~~(15)~~] A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer by phone or in person:

1. Twenty-four (24) hours per day, seven (7) days per week; and

2. To assist the consumer in obtaining community resources as needed;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(19)[~~(17)~~] For a CDO participant, a support broker may conduct an assessment or reassessment.

(20) Financial management shall:

(a) Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

(b) Include payroll processing associated with the individual hired by a consumer or the consumer's representative;

(c) Include:

1. Withholding local, state, and federal taxes; and

2. Making payments to appropriate tax authorities on behalf of a consumer;

(d) Be performed by an entity:

1. That is enrolled as a Medicaid provider in accordance with

907 KAR 1:672;

2. That is currently compliant with 907 KAR 1:671;

3. Which has at least two (2) years of experience working with individuals with an acquired brain injury; and

(e) Include preparation of fiscal accounting and expenditure reports for:

1. A consumer or consumer's representative; and

2. The department.

Section 9. Electronic Signature Usage. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An ABI provider which chooses to use electronic signatures shall:

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

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

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

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

(b) Develop a consent form which shall:

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

2.Attest to the signature's authenticity; and

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

(c) Provide the department with:

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

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 10.[~~9.~~] Appeal Rights. (1) An appeal of a department decision regarding a recipient[~~Medicaid beneficiary~~] based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 11.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-109 Prior Authorization for Waiver Services", July 2008[~~March 2007~~] edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification", July 2008[~~April 2007~~] edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", July 2008[~~May 2003~~] edition;

(d) "MAP-95, Request for Equipment Form", May 2010[~~June 2007~~] edition;

(e) "MAP-10 Waiver Services", July 2008[~~January 2007~~] edition;

(f) "Incident Report", July 2008[~~April 2007~~] edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", July 2008[~~March 2007~~] edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008[~~January 2000~~] edition;

(i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006 edition[~~"Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition~~];

(j) "MAP-351, Medicaid Waiver Assessment", July 2008[~~March 2007~~] edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; [~~and~~]

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

(m) "MAP-4100a", April 2009 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: June 26, 2010

FILED WITH LRC: July 1, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Building, First Floor, Conference Suite C, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Pratt (502) 564-5198 or Dana McKenna

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

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

(a) How the amendment will change this existing administrative regulation: Amendments include establishing a residential care model tailored to recipient's needs which will be reimbursed accordingly. The new residential care model is comprised of three levels of care - supervised residential care levels I, II and III. Additional amendments include: incorporating by reference a form (MAP-4100a not previously incorporated) to be used by entities applying to become ABI waiver service providers; clarifying that the providers are prohibited from imposing the following on ABI service recipients: prone or supine restraint, corporal punishment, seclusion, verbal abuse or any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; inserting an annual criminal record check requirement for staff 25% – the department already requires this for the sup-

ports for community living (SCL) program; establishing that the human rights committee shall review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; lowering the ABI waiver program eligibility age to 18 rather than 21 years and remove the 65 age limit; utilizing the admission/discharge form (MAP-24C) for case management agency changes; involuntarily terminating an individual from ABI waiver service program participation if the individual is no longer actively participating in services within their approved plan of care; adding a case management quarterly summary requirement - the department already requires this for the SCL program; clarifying the behavior programming summary requirement; eliminating the group counseling limit of twice a week not to exceed ninety 90 minutes; reducing the group counseling limit from 12 recipients to 2 to 8 recipients; inserting an annual provider certification requirement where applicable; requiring respite staff notes to address progress toward goals and objectives identified in the approved plan of care; inserting an adult day training monthly summary requirement - the department already requires this for the SCL program; elaborating on assessment and reassessment provisions; expanding class III incidents to include a medication error involving hospitalization and an admission to an acute or psychiatric hospital; elevating chemical and physical restraints from a class II to class III incident; changing the name of structured day services to adult day training in order to be consistent with the SCL program; elaborating on emergency review committee and emergency application provisions; adding community day supports and goods and services to the consumer-directed option (CDO); consistent with the consumer-directed option policies in the home and community based waiver services regulation and the Michelle P. waiver services regulation adding the following reasons for involuntary termination from CDO participation: the recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present, or the recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff; adding CDO budget adjustment provisions; clarifying that a support broker must be available to a consumer 24 hours a day, 7 days a week by phone or in person; inserting CDO financial management provisions; and inserting a section establishing electronic signature provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the health, safety and welfare of ABI waiver service recipients and to replace the prior residential reimbursement model with one tailored to recipients' needs as well as more cost effective. Additionally, the amendment is necessary to clarify policies and ensure consistency with the corresponding waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 177 individuals receiving ABI waiver services and 24 providers of ABI waiver services pursuant to 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: Providers will have to comply with new requirements including a case management quarterly summary report, addressing progress toward goals and outcomes in respite staff notes, and utilizing the admission/discharge (MAP-24C) form for case management agency changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Some providers could experience additional minimal administrative costs as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The recipients' safety and welfare are enhanced as a result of the amendment.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment - implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/day, $175/day and $75/day respectively.

(b) On a continuing basis: DMS estimates that the amendment in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

(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 Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7.) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.300 - 310.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that the amendment - implemented in conjunction with the companion

reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services that were 2 DMS levels - a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/da7, $175/day and $75/day respectively.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that the amendment - in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

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

Revenues (+/-):

Expenditures (+/-):

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amendment)

907 KAR 3:100. Reimbursement for acquired brain injury waiver services.[~~Payments for acquired brain injury services~~]

RELATES TO: 42 C.F.R. 441.300 - 310,[~~42 C.F.R. 441 Subpart G,~~] 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(3), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the payment provisions relating to home - and community -based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the provider criteria established in 907 KAR 3:090, Section 2.

(3) "ABI recipient" means an individual who meets the ABI recipient criteria established in 907 KAR 3:090, Section 3.

(4) "Acquired brain injury waiver services" or "ABI waiver services" means home - and community-based waiver services provided to a Medicaid eligible individual aged twenty-one (21) to sixty-five (65) who has acquired a brain injury to his central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or from a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

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

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

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

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

(7)[~~(2)~~] "Department" means the Department for Medicaid Services or its designated agent.

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

Section 2. Coverage.[~~(1)~~] The department shall reimburse a participating provider for:

(1) An ABI waiver service provided to a Medicaid eligible person who meets the ABI waiver program requirements as established in 907 KAR 3:090; and

(2) A prior authorized ABI waiver service, if the service is:

(a) Included in the recipient's plan of care;

(b) Medically necessary; and

(c) Essential for the rehabilitation and retraining of the recipient.[~~(2) The department shall reimburse an ABI participating provider for a prior-authorized ABI waiver service, if the service is:~~

~~(a) Included in the plan of care and Is medically necessary, as defined in 907 KAR 3:130; and~~

~~(b) Essential for the rehabilitation and retraining of the recipient.~~]

Section 3. Exclusions to Acquired Brain Injury Waiver Program. Under the ABI waiver program, the department shall not reimburse a provider for a service provided:

(1) To an individual who has a condition identified in 907 KAR 3:090, Section 5[~~2~~]; or

(2) Which has not been prior authorized as a part of the recipient's plan of care.

Section 4. Payment Amounts. (1) A participating ABI waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a recipient.

(2) A participating ABI waiver service provider certified in accordance with 907 KAR 3:090 shall be reimbursed at the lesser of:

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

(b) The Medicaid fixed upper payment limit per unit of service as established in Section 5 of this administrative regulation.

Section 5. Fixed Upper Payment Limits. (1) The following respective rates shall be the fixed upper payment limits[~~, in effect on July 1, 2001,~~] for the corresponding respective ABI waiver services in conjunction with the corresponding units of service and unit of service limits:

Service	Unit of Service	Unit of Service Limit	Upper Payment Limit
Case management	1 month	1 unit per ABI recipient per month	$434.00 per month
Personal care	15 minutes	80 units per week	$5.56 per unit
Respite care	15 minutes	336 hours per 12-month period	$4.00 per unit
Companion	15 minutes	200 units per week	$5.56 per unit
Adult day training	15 minutes	160 units, alone or in combination with supported employment, per calendar week	$4.03 per unit
Supported employment	15 minutes	160 units, alone or in combination with adult day training, per calendar week	$7.98 per unit
Behavior programming	15 minutes		$33.61
Counseling - group	15 minutes	2 - 8 people in a group setting and 48 units per ABI recipient per calendar	$5.75 per unit

		month	
Counseling - individual	15 minutes	16 units per day	$23.84 per unit
Occupational therapy	15 minutes	16 units per day	$25.90 per unit
Speech, hearing and Language services	15 minutes	16 units per day	$28.41 per unit
Specialized medical equipment and supplies (see subsection (2) of this section)	Per item	As negotiated by the department	As negotiated by the department
Environmental modification	Per modification	Actual cost not to exceed $2,000.00 per 12-month period	Actual cost not to exceed $2,000.00 per 12-month period
Supervised residential care level I	1 calendar day	1 unit per ABI recipient per calendar day	$200.00 per unit
Supervised residential care level II	1 calendar day	1 unit per ABI recipient per calendar day	$150.00 per unit
Supervised residential care level III	1 calendar day	1 unit per ABI recipient per calendar day	$75.00 per unit
Assessment	The entire assessment equals 1 unit	1 unit per ABI recipient	$100.00 per unit
Re-assessment	The entire reassessment equals 1 unit	1 unit per ABI recipient	$100.00 per unit
CDO home and community supports			Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO community day supports			Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO goods and services			Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
Support broker	1 calendar month	1 unit per ABI recipient per calendar month	$375.00
Financial management	15 minutes	8 units or $100.00 per month	$12.50 per unit

~~Service~~	~~Unit of Service~~	~~Upper Payment Limit~~
~~Case Management~~	~~1 month~~	~~$434.00~~
~~Personal Care~~	~~15 minutes~~	~~$5.56~~
~~Respite Care~~	~~1 hour (not to exceed 168 hours per six (6) month period)~~	~~$15.98 (maximum of $150.00 per day)~~
~~Companion~~	~~15 minutes~~	~~$5.56~~
~~Structured Day Program~~	~~1 hour (not to exceed forty (40) hours per week~~	~~$16.11~~
~~Supported Employment~~	~~1 hour~~	~~$31.92~~
~~Behavior Programming~~	~~15 minutes~~	~~$33.61~~
~~Counseling - Individual~~ ~~Counseling - Group~~	~~15 minutes~~ ~~15 minutes~~	~~$23.84~~ ~~$5.75~~
~~Occupational Therapy~~	~~15 minutes~~	~~$25.90~~
~~Service~~	~~Unit of Service~~	~~Upper Payment Limit~~
~~Speech, Hearing and Language Services~~	~~15 minutes~~	~~$28.41~~
~~Specialized Medical Equipment and Supplies (see subsection (2) of this section)~~	~~Per Item~~	~~As Negotiated by the Department~~
~~Environmental Modification~~	~~Per Modification~~	~~Actual cost not to exceed $1,000.00 per 6 month period~~
~~Community Residential Service (Staffed Residence)~~	~~Not Applicable~~	~~$200.00~~

~~Community Residential Service (Group Home)~~	~~Not Applicable~~	~~$90.00~~

(2) Specialized medical equipment and supplies shall be reimbursed on a per-item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:

(a) The equipment or supply is:

1.[~~They are~~] Not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

2.[~~(b) They are~~] Provided to an individual participating in the ABI waiver program.

(3) Respite care may exceed 336 hours in a twelve (12)[~~168 hours per six (6)~~] month period if an individual's normal care giver is unable to provide care due to a death in the family, serious illness, or hospitalization.

(4) [~~Payment for respite care provided in a setting other than a nursing facility shall not include the cost of room and board.~~]If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.

(5) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall:

(a) Be made only for the supervision and training required as the result of the ABI recipient's disabilities; and

(b)[~~and shall~~] Not include payment for supervisory activities normally rendered.

(6)(a) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(b) For an individual receiving supported employment services, documentation shall be maintained in his or her record demonstrating that the services are not otherwise available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III). [~~(7) Except for state fiscal years (SFY) 2002 and 2003, The Medicaid fixed upper payment limits established in this section shall be adjusted by the department annually for inflation using the Standard and Poor's DRI Medical Index.~~]

Section 6. Payment Exclusions. Payment shall not include: (1) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility[~~. If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual~~];

(2) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(3) Excluding an environmental modification[~~as established in the Acquired Brain Injury Services and Reimbursement Program Manual~~], the cost of maintenance,
upkeep, or an improvement to a recipient's place of residence;

(4) The cost of a service that is not listed in the recipient's approved plan of care; or

(5) A service provided by a family member.

Section 7. Records Maintenance. A participating provider shall:

(1) Maintain fiscal and service records for at least six (6) years;[~~a period of at least five (5) years;~~]

(2) Provide, as requested by the department, a copy of, and access to, each record of the ABI waiver program retained by the provider pursuant to:

(a) Subsection (1) of this section; or

(b) 907 KAR 1:672[~~, Sections 2, 3, and 4~~]; and

(3) Upon request, make available service and financial records to a representative or designee of:

(a) The Commonwealth of Kentucky, Cabinet for Health and Family Services or its designee[~~designated agent~~];

(b) The United States Department for Health and Human Services, Comptroller General;

(c) The United States Department for Health and Human Services, the Centers for Medicare and Medicaid Services (CMS);

(d) The General Accounting Office;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

(f) The Commonwealth of Kentucky, Office of the Attorney General.

Section 8. [~~Payment Rate for State Fiscal Year (SFY) 2002. With the exception of rates for community residential services, which shall be as established in Section 5 of this administrative regulation, effective July 1, 2001 the payment rate that was in effect on June 30, 2001, for an ABI service shall remain in effect.~~

~~Section 9. Payment Rate for State Fiscal Year (SFY) 2003. Effective July 1, 2002, the payment rate that was in effect on June 30, 2002 for an ABI service shall remain in effect.~~

~~Section 10.~~] Appeal Rights. An ABI wavier provider may appeal department decisions as to the application of the administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.[~~Section 11. Incorporation by Reference. (1) "Acquired Brain Injury Services and Reimbursement Program Manual", Department for Medicaid Services, "September 2001 Edition", is incorporated by reference.~~

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY: June 25, 2010

FILED WITH LRC: July 1, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Building, First Floor, Conference Suite C, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Pratt or Dana McKenna (502) 564-5198

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain

injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the reimbursement provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes reimbursement for supervised residential care levels I, II and III; inserts service limits; inserts consumer-directed option (CDO) reimbursement provisions; deletes the annual inflation adjustment factor for upper payment limits; deletes the rate freeze language from prior years; clarifies policy; deleting the manual from the material incorporated by reference as the regulation establishes policy and revising language or formatting to ensure compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that providers are reimbursed for provided supervised residential care levels I, II and III.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment amends acquired brain injury waiver service reimbursement within the parameters established by authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishes reimbursement for supervised residential care levels I, II and III; inserting service limits; inserting CDO reimbursement provisions and clarifying policy.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are twenty-four (24) providers of ABI waiver services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is anticipated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question(3). No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The primary benefit is the establishment of a new service category for which DMS will reimburse - supervised residential care level I, II and III.

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

(a) Initially: DMS estimates that the amendment will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) levels - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

(b) On a continuing basis: DMS estimates that the amendment will result in a cost avoidance of $466,200 in the second fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) categories - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

(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 Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

(9) Tiering: Is tiering applied? Tiering is not applied as the administrative regulations provisions apply equally to regulated entities.

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 Medicaid Services is affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.300 - 310.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration. To the contrary, DMS estimates that the amendment will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) levels - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration. To the contrary, DMS estimates that the amendment will result in a cost avoidance of $466,200 in the second fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services that previously had two DMS levels - a staffed residence reimbursed at $200 per day and a group home reimbursed at $90 per day. Via the amendment, DMS is customizing the residential service according to the recipient and has established three (3) categories - level I, II and III which will be reimbursed respectively at $200 per day, $175 per day and $75 per day.

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.

PERSONNEL CABINET
(New Administrative Regulation)

101 KAR 5:015. Furloughs.

RELATES TO: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g)

STATUTORY AUTHORITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g)

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 1, passed during the 2010 Kentucky General Assembly Extraordinary Session, requires the Secretary of Personnel to promulgate an administrative regulation establishing procedures for the implementation of furloughs or a temporary reduction of hours of all Executive Branch employees due to a lack of funds as certified by the State Budget Director. This administrative regulation establishes the requirements for implementing the furlough plans.

Section 1. Definitions. (1) "Appointing authority" means "Appointing Authority" as defined in KRS 18A.005(1) and KRS 151B.010(1). In relation to KRS Chapter 16, "Appointing Authority" means the Commissioner of the Department of Kentucky State Police;

(2) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the Appointing Authority within a pay period;

(3) "Lack of funds" means a current or projected deficiency of funding to maintain current or projected levels of staffing and operations of state government in a fiscal year; and

(4) "Secretary" means the Secretary of the Personnel Cabinet as provided for in KRS 18A.115.

Section 2. General Provisions. (1) The Secretary shall authorize the furlough of all state executive branch employees based upon a lack of funds, as certified by the State Budget Director, with the approval of the Governor.

(2) All state executive branch employees, classified and unclassified, shall be furloughed no more than twenty-four (24) work hours in a six (6) month calendar period, as provided herein:

(a) Employees regularly assigned to a forty (40) hour work schedule shall be furloughed no more than three (3) work days or twenty-four (24) work hours;

(b) Employees regularly assigned to a thirty-seven and one-half (37.5) hour work schedule shall be furloughed no more than three (3) work days or twenty-two and one-half (22.5) work hours, which is the equivalent reduction of hours and corresponding pay; and

(c) All remaining employees on different work schedules shall be furloughed in a manner to achieve an equivalent reduction of hours and corresponding pay, which shall be set forth in the furlough plan provided by the cabinet secretary or independent agency head and approved by the Secretary of Personnel.

(3) Unclassified employees appointed pursuant to KRS 18A.115(1)(d), (e), (f), (g), (h), or (i) may be furloughed additional work hours.

(4) A furloughed employee whose hours of work are temporarily reduced:

(a) Shall remain eligible for state-paid benefits during the temporary reduction of hours;

(b) Shall be notified in writing by the appointing authority at least seven (7) calendar days prior to the date of furlough, except that an employee may voluntarily agree in writing to waive the seven (7) day notice requirement;

(c) Shall not be furloughed more than twenty (20) percent of an employee's scheduled work hours in any one (1) work week, except as provided in section (5) herein;

(d) Shall not be eligible to utilize accrued leave balances in lieu of temporary reduction of hours without pay; and

(e) Shall not be entitled to appeal the reduction of work hours to the Personnel Board, the Kentucky Technical Education Personnel Board, the Kentucky State Police Trial Board, or the applicable administrative body.

(5) In addition to the mandatory furlough hours, any employee may volunteer, with the prior approval of the appointing authority, to take leave without pay and retain accrued leave balances. An employee shall submit the Voluntary Furlough Request Form to the Secretary of Personnel before the effective date of such voluntary furlough.

(6) Utilization of contractors shall be reduced in a similar manner by each appointing authority.

Section 3. Procedures. (1) Each cabinet secretary and independent agency head shall develop a furlough plan prior to implementation for the Secretary's review and approval.

(2) Each cabinet secretary and independent agency head shall submit the following information within the furlough plan for review and approval by the Secretary:

(a) The appointing authority and designees responsible for the oversight and administration of the furlough plan within that organization;

(b) The proposed manner of how furlough hours will be applied and the steps the organization took to arrive at that proposed action;

(c) A statement regarding whether the appointing authority and the Personnel Secretary have determined any provisions or exemptions are necessary to accommodate any staff employed in twenty-four (24) hour, seven (7) day-a-week operations; facilities responsible for the care or safety of inmates or employees; or, uniformed law enforcement officers or trainees that protect the citizens of the Commonwealth of the Kentucky, with supporting documentation attached;

(d) Certification and acknowledgment by the appointing authority that during the period of furlough no contractor will receive either additional duties typically performed by a furloughed employee or work additional hours due to the furlough of a state employee;

(e) A statement regarding whether or not a temporary closing of an office was an option to achieve maximum operational savings; and

(f) A copy of the notice that each employee will receive at least seven (7) calendar days prior to the first day of furlough from the appointing authority.

(3) In the event of emergency or national disaster, the Secretary has the authority to amend the furlough plan as necessary.

Section 4. Incorporation by Reference. (1) The following material is incorporation by reference: Voluntary Furlough Request Form, July 2010.

(2) This material may be inspected, copied or obtained at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday-Friday, 8:00 a.m.–4:30 p.m.

NIKKI R. JACKSON, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 13, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 26, 2010 at 10 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for implementing furlough plans for all state executive branch employees.

(b) The necessity of this administrative regulation: The Kentucky General Assembly, per House Bill 1 in the 2010 Extraordinary Session, established that the Secretary of Personnel must promulgate an administrative regulation prior to the furlough of any employee. The regulation is necessary to implement the authorized furlough plans, establish the criteria which must be included in these plans, and also notify employees of the consistent guidelines which will apply to all employees when a furlough plan is implemented.

(c) How this administrative regulation conforms to the content of the authorizing statutes: HB 1 of the 2010 Extraordinary Session of the Kentucky General Assembly requires the Personnel Secretary to promulgate this regulation prior to exercising the authority with which the Personnel Cabinet, the Governor, and the Office of the State Budget Director were expressly granted. Further, KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the requirements of those set forth in HB 1 of the 2010 Extraordinary Session, as it establishes how furlough plans will be submitted to the Personnel Cabinet for review, how hours of furlough are determined, and the additional guarantees that all employees will receive.

(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 regulation impacts all state executive branch cabinets and independent agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will have to formulate a Furlough Plan and submit the Plan for review and approval to the Personnel Cabinet Secretary prior to implementation. The plan will involve determination whether any staff should be exempted from any specific furlough provision, per the specific limitations set forth in the regulation. Each entity will then be responsible for implementation of their cabinet/agency plan, as well as the oversight and tracking of the unpaid leave of its employees. Proper notice to each employee is required, which is handled at the cabinet/agency level, as well as the handling of additional questions or issues which may arise.

(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 anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The decision to implement furloughs was necessary to achieve the savings required by the budget passed by the General Assembly. In the first fiscal year alone, over $24 million dollars in savings will be recognized.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 1 of the 2010 Kentucky General Assembly Extraordinary Session and KRS 18A.030.

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? There are no estimated additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.700, 161.310, 26 U.S.C. sec. 414(p).

STATUTORY AUTHORITY: KRS 161.700, 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.700 requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system.

Section 1. Definitions. (1) "Alternate Payee" is defined by KRS 161.220(26).

(2) "Benefits" means, for purposes of this administrative regulation, a monthly service or disability retirement allowance or re-

fund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, KTRS member identification number and last-known mailing address;

(b) The alternate payee's name and last-known mailing address;

(c) Whether the order applies to an active account from which the member is not currently receiving a retirement allowance, or to a retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either;

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) of this administrative regulation;

(h) When payments shall begin;

(i) When payments shall cease;

(j) That the alternate payee shall be paid in the same form as the participant;

(k) Whether the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to such alternate payee;

(l) Who shall be responsible for payment of the KTRS processing fee; and

(m) All information required on the form incorporated by reference in this administrative regulation.

(2) A QDRO shall be:

(a) Signed by the judge of a court of competent jurisdiction;

(b) Filed with the clerk of the court; and

(c) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.

(2) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release. The employer shall return the completed form to KTRS within ten (10) work days.

(3) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.

(4) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage.

(5) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(6) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative Rule Compliance form which has been approved by both the participant or alternate payee or their legal counsel;

(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's Social Security cards;

(e) Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including Military Service Certification and Affidavit form, with a copy of discharge papers.

(7) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel.

(8) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(9) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollars nonrefundable processing fee.

(10) Following approval by the court, the participant, alternate payee or legal counsel shall file a certified copy of the QDRO with KTRS. The QDRO shall not become effective until the certified copy is received by KTRS. Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO. While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established. Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS.

(11) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, the participant, alternate payee or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(12) The participant, alternate payee or legal counsel shall not submit a QDRO which is not final and under consideration by an appellate court.

(13) The alternate payee shall be responsible for notifying KTRS of any change in name or mailing address. KTRS shall provide a Name or Change of Address form upon request. KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable. Other than sending such notice, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee. If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee. KTRS shall have no liability to the alternate payee with respect to such

amounts paid to the participant.

(14) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child or other dependent, to cease. The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate. The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments. KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

Section 4. A QDRO may apply to a participant's: (1) Retirement allowance;

(2) Disability retirement allowance; or

(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's: (1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;

(3) Accounts that are not vested at the time of the dissolution of marriage;

(4) Life insurance benefit;

(5) Refund as a result of an error;

(6) Refund of an active or retired account in response to a member's death:

(7) Health insurance; and

(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty (50) percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), multiplied by the following fraction:

(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

(b) The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of dissolution of the marriage.

(2) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(3) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d). However, if at the time of retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts. KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(4) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at the time of issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(5) The participant may select any retirement option but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KTRS Authorization for Release of Information", 14 July 2010;

(b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;

(c) "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", 14 July 2010;

(d) "KTRS Administrative Regulatory Compliance", 14 July 2010;

(e) "KTRS Confidential Information", 14 July 2010;

(f) "KTRS Authorization for Direct Deposit", 14 July 2010;

(g) "KTRS Military Service Certification and Affidavit", 14 July 2010; and

(h) "KTRS Name or Change of Address", 14 July 2010;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BARBARA STERRETT, Chairperson

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 24 August 2010, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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 31 August 2010. 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508 or fax (502) 848-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of qualified domestic relations orders ("QDRO") by Kentucky Teachers' Retirement System ("KTRS").

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure com-

pliance with the amendments to KRS 161.700.

(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: setting forth the procedures and timelines to be followed in filing a QDRO with KTRS, setting the filing fees, providing the formula for calculating the amount to be paid to the alternate payee, and incorporating the forms required by KTRS.

(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 informing KTRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

(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 statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to participants and alternate payees of participants of KTRS who are subject to a qualified domestic relations order.

(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 comply with this administrative regulation or amendment: The participants, their alternate payees and legal counsel will have to adhere to the requirements for filing a QDRO for approval by KTRS, including the timeframes for filing the KTRS QDRO forms, payment of the processing fee, and utilization of the formula for calculation of the alternate payee's share.

(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 a $50 initial processing fee and a $25 processing fee for amended QDROs to be paid by the participant, the alternate payee or shared by both parties as ordered by the court.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted to access participants' retirement benefits which were previously exempt from distribution during dissolution of marriage.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with KTRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of KTRS incurred in processing QDROs will be paid via the processing fees.

(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 regulation establishes the fees to be assessed for processing QDROs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes a $50 initial processing fee and a $25 processing fee for amended QDROs.

(9) TIERING: Is tiering applied? Tiering is not applied, as all participants and alternate payees of participants are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, 161, 310.

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 additional revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(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? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for processing the QDROs will depend upon the number of orders received.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs will depend upon the number of orders received and cannot be quantified at this time.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:330. Travel and administrative expenses.

RELATES TO: KRS 161.585

STATUTORY AUTHORITY: KRS 161.585

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.585 requires the Board of Trustees of Kentucky Teachers' Retirement System (KTRS) to promulgate an administrative regulation to recover travel and administrative expenses incurred when KTRS staff are required to produce records or provide testimony in response to a duly issued subpoena.

Section 1. Definitions. (1) "Cabinet" means the Finance and Administration Cabinet.

(2) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the secretary of the cabinet as a high rate area.

(3) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

Section 2. (1) Any person or party who requests a subpoena requiring the personal appearance of an employee of KTRS to appear in a court proceeding or at a deposition or administrative hearing shall pay KTRS for the travel expenses of the KTRS employee and KTRS' legal counsel, including:

(a) The then prevailing mileage rate;

(b) Parking and tolls;

(c) Meals, if the employee is required to be away from his work station before, during or after working hours;

(d) Lodging expenses, if necessary; and

(e) The wages of the employee or legal counsel for the period he is required to be away from his work station which shall be calculated by multiplying the hourly rate of the employee or legal counsel by the number of hours each is required to be away from his work station.

(2) The mileage rate, meals, and lodging expenses, including those expenses incurred in a high rate area, shall be billed or reimbursed in accordance with the reimbursement rates established by the cabinet in 200 KAR 2:006.

(3) KTRS shall send an estimated amount for the expenses to the person or party requesting the subpoena.

(a) The person or party shall forward payment for the estimated expenses prior to the date of the appearance mandated by the subpoena.

(b) KTRS shall forward an invoice with supporting receipts for any additional expenses incurred by the employee or legal counsel or issue a refund for any amount in excess of the estimated expenses. Any personal identifying information regarding the employee or legal counsel shall be redacted from the receipt prior to its release.

(4) Any person or party who requests a subpoena requiring the production of copies of records or information in the custody of KTRS in standard hard copy format shall pay KTRS a fee for such production which shall include:

(a) A copy charge of fifteen (15) cents per page;

(b) Postage based upon the weight of the package; and

(c) The wages of the employee required to compile or copy the requested records calculated by multiplying the hourly rate of the employee by the number of hours necessary to compile, copy and collate the records or information.

(5) Any person or party who requests a subpoena requiring the production of records in the custody of KTRS in an electronic format which requires KTRS staff to write a program to extrapolate the requested information from the member's database to meet the specific request may recover staff costs at a rate of twenty-five ($25.00) dollars per hour.

(6) KTRS shall notify the person or party of the fee in writing. The person or party shall forward payment for the requested records prior to release of such records by KTRS.

BARBARA STERRETT, Chairperson

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8508.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes how Kentucky Teachers' Retirement System ("KTRS") shall recoup its costs associated with the production of records or testimony in response to duly issued subpoenas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.585.

(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 delineating the expenses KTRS may assess in the course of responding to a subpoena for records or testimony of KTRS staff.

(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 listing those actions for which a fee may be assessed as well as the rate of such fees.

(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 statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to any agency, entity, legal counsel or participant of KTRS who issues a subpoena for the production of records or testimony by KTRS staff.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Those requesting production of records or testimony pursuant to a duly issued subpoena will be required to reimburse KTRS for expenses associated with the production of such records and testimony by KTRS staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to those requesting production of records or testimony of KTRS staff will depend upon the breadth of the subpoena, as well as whether hard copies will suffice or staff travel and testimony is required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those requesting production of records or testimony will be permitted access to records and information which were previously exempt from disclosure under KTRS' comprehensive confidentiality statute.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of subpoenas filed with KTRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses incurred by KTRS will be paid via the fees assessed for the particular request.

(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 regulation establishes the fees and costs to be assessed for responding to subpoenas.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that KTRS will utilize the same rates for mileage, meals, lodging expenses, parking and tolls as those rates set by the Finance and Administration Cabinet.

(9) TIERING: Is tiering applied? Tiering is not applied, as all those requesting information or testimony by KTRS staff are

treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.585, 161, 310.

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 additional revenue generated by this regulation will be dependent upon the number of subpoenas filed with KTRS and cannot be quantified at this time.

(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? Future revenue generated by this regulation will be dependent upon the number of subpoenas filed with KTRS and cannot be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for responding to the subpoenas will depend upon the nature and number of the subpoenas received.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing subpoenas will depend upon the number of subpoenas received and cannot be quantified at this time.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(New Administrative Regulation)

103 KAR 31:102. Rebate for a governmental public facility.

RELATES TO: KRS 139.010, 139.200, 139.533

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139 relating to the assessment, collection, refund, and administration of taxes. KRS 139.533 establishes the sales tax rebate provisions for sales of admissions to and sales of tangible personal property at a governmental public facility. This administrative regulation is necessary to establish the requirements and procedures to apply for the sales tax rebate created by KRS 139.533.

Section 1. Definitions. (1) "Effective date" is defined by KRS 139.533(1)(a);

(2) "Governmental entity" is defined by KRS 139.533(1)(b); and

(3) "Public facility" is defined in KRS 139.533(1)(c).

Section 2. Registration Process. (1) To determine eligibility for the sales tax rebate under KRS 139.533, the governmental entity shall submit to the Department of Revenue a fully completed Governmental Public Facility Sales Tax Rebate Registration, Form 51A400.

(2) The department shall notify the qualifying governmental entity of the effective date for sales eligible for the sales tax rebate according to the provisions of KRS 139.533(1)(a) and (3).

Section 3. Quarterly Rebate Application Requirements. (1) An approved governmental entity shall file the following within the sixty (60) day timeframe as provided for in KRS 139.533(4):

(a) A fully completed Governmental Public Facility Application for Sales Tax Rebate, Form 51A401; and

(b) A properly executed Vendor Assignment Agreement for Sales at a Qualifying Public Facility, Form 51A402, for any seller other than the qualifying governmental entity whose receipts are included in the rebate request.

(2) All applications and other documents required shall be postmarked, electronically submitted or, if delivered by messenger, hand-stamped by the department by the date required to qualify for consideration.

(3) The department shall pay the rebate amount determined due within the forty-five (45) day timeframe as provided for in KRS 139.533(5).

Section 4. Recordkeeping Requirements. (1) The qualifying governmental entity shall keep adequate and complete records supporting its rebate request(s) for periods not less than four (4) years as provided for in KRS 139.720.

(2) The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.533.

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

(a) "Governmental Public Facility Sales Tax Rebate Registration", Form 51A400, June 2010;

(b) "Governmental Public Facility Application for Sales Tax Rebate", Form 51A401, June 2010; and

(c) "Vendor Assignment Agreement for Sales at a Qualifying Public Facility", Form 51A402, June 2010.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 1, 2010

FILED WITH LRC: July 9, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2010, from 10 a.m. to noon, in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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. Written comments shall be accepted until August 31, 2010. 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DeVon Hankins, (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides needed guidance to a governmental entity concerning the sales tax rebate process for public facility sales of admissions and other tangible personal property.

(b) The necessity of this administrative regulation: This administrative regulation establishes the process and forms necessary for qualifying and receiving the sales tax rebate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. This regulation provides needed guidance to qualify for the sales tax rebate under the terms of KRS 139.533.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will provide the information necessary to comply with the sales tax rebate guidelines. (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 regulation will only affect a limited number of governmental entities as defined in KRS 139.533(1)(b) and their related third-party vendors who sell at the respective public facilities. There are approximately 25 facilities within the population parameters that currently meet the seating capacity requirements in KRS 139.533(1)(c). However, there are 115 counties with populations of less than 100,000 that could qualify if they decide to build a facility that meets the seating capacity requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To qualify for the sales tax rebate for sales to or at the public facility, the governmental entity must register with the department and then file quarterly rebate applications based upon the actual taxes collected and paid.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The paperwork will be minimal to verify the required standard of proof for rebate eligibility. Postage costs for filing the initial registration and quarterly rebate applications will also be an expense.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The approved governmental entity will be eligible for up to $250,000 in annual sales tax rebates if sales at the public facility generate sufficient receipts.

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

(a) Initially: minimal costs of enactment and dissemination to be covered under the general administrative expenses of the Department.

(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 eligible 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? Kentucky Department of Revenue, Office of Sales and Excise Taxes will administer this tax and subsequent compliance initiatives. A county with less than 100,000 residents or a city in a county of this size with a public facility defined in KRS 139.533(1)(c) is eligible to pursue the sales tax rebate outlined in this 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(1) and 139.533.

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 regulation provides the guidance necessary for a qualifying county or city to claim applicable sales tax rebates of up to $250,000 annually.

(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 regulation provides the guidance for a qualifying county or city to annually receive up to $250,000 in sales tax rebates.

(c) How much will it cost to administer this program for the first year? The administrative cost will be absorbed in the normal operating cost of the department.

(d) How much will it cost to administer this program for subsequent years? The administrative cost will be absorbed in the normal operating budget of the department for subsequent years.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:330. Emergency pharmacy powers.

RELATES TO KRS 315.500, 315.505

STATUTORY AUTHORITY: KRS 315.191

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191 authorizes the Board of Pharmacy to promulgate administrative regulations governing pharmacists and pharmacies. This administrative regulation sets out the conditions whereby a prescription may be refilled pursuant to an executive order issued by the Governor as authorized by KRS 315.500 when the prescriber is unavailable. This administrative regulation sets out the conditions whereby a pharmacy may operate temporarily in an area not designated on the pharmacy permit pursuant to an executive order issued by the Governor as authorized by KRS 315.500.

Section 1. If a pharmacist receives a request for a prescription refill with no refill authorized and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense an emergency refill of up to a thirty (30) day supply of the medication when:

(1) The Governor has issued an executive order as authorized by KRS 315.500 for the county where the pharmacy is located;

(2) The pharmacist obtains prescription information from:

(a) A prescription label;

(b) A prescription record within the pharmacy;

(c) A prescription record from another pharmacy;

(d) A common database;

(e) The patient;

(f) Any other legitimate source of prescription record information; or

(g) Any other healthcare record;

(3) The prescription refill is not a controlled substance;

(4) The prescription is for a maintenance medication;

(5) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable consequences or may be detrimental to the patient's welfare and cause physical or mental discomfort; and

(6) The pharmacist notes on the prescription record the date, the quantity dispensed, and the pharmacist's name or initials.

Section 2. (1) If a pharmacy temporarily relocates because it is not safe or practicable to operate at the location listed on the permit, then the pharmacy may temporarily relocate to and operate at a new location when:

(a) The Governor has issued an executive order as authorized by KRS 315.500 for the county where the pharmacy is located;

(b) The pharmacy owner is able to maintain confidentiality of patient records;

(c) The pharmacy owner is able to secure the drugs; and

(d) The pharmacy owner notifies the board as soon as practicable of the temporary address.

(2) The following shall not apply for this temporary location:

(a) The requirement to maintain references as listed in 201 KAR 2:090, Section 1;

(b) The requirement to maintain equipment as listed in 201 KAR 2:090, Section 2; and

(c) The requirement that the pharmacy be enclosed by a floor to ceiling partition if it is located within a larger establishment which is open to the public for business when a pharmacist is not present.

JOEL THORNBURY, Board President

APPROVE BY AGENCY: July 14, 2010

FILED WITH LRC: July 14, 2010 at 4 p.m.

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday August 31, 2010 at 3 p.m. at the board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by 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. on August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

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 pharmacist to dispense a 30 day supply of a non-controlled maintenance medication to a patient when the Governor has declared an emergency and allows a pharmacy to relocate to a temporary location not listed on the pharmacy permit.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.505.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations that establishes the requirements for a pharmacist to dispense an thirty day supply during an emergency declaration by the Governor and for a pharmacy to temporarily relocate to a location not listed on the pharmacy permit during an emergency declaration by the Governor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a pharmacist to dispense a thirty day supply of a noncontrolled maintenance medication to a patient and for a pharmacy to be able to relocate to a location not listed on the pharmacy permit.

(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 less than twenty-five pharmacies 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: A pharmacist will be able to dispense a thirty day supply of a maintenance medication to a patient during a declared emergency by the Governor and a pharmacy will be able to relocate to a location not listed on the pharmacy permit if practice at the current location is not safe or practicable during a declared emergency by the Governor.

(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): A pharmacist will be able to provide prescription refills for patients during an declared emergency by the Governor and a pharmacy will be able to relocate to a temporary address if practice at the current location is not safe or practicable to operate during an declared emergency by the Governor.

(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 any pharmacist or pharmacy during a declared emergency by the Governor.

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 315.500, 315.505, and 315.191 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:

GENERAL GOVERNMENT CABINET
Board of Dentistry
(New Administrative Regulation)

201 KAR 8:500. Board organization.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 2

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 2, 2010 Ky. Acts ch. 85, sec. 3(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 2 authorizes the board to hold annual elections for vacancies, and 2010 Ky. Acts ch. 85, sec. 3(1)(h) requires the board to establish committees and subcommittees and the membership thereof. This administrative regulation establishes the organization of the board, the procedure for elections, and the structure of committees of the board.

Section 1. Vacancies for the position of dentist on the board shall be filled by candidates selected according to the following geographic chart with two (2) members representing Zone 1 and one (1) member each from Zone 2 to Zone 6, inclusive:

(1) Zone 1 - Louisville Area: Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Meade, Nelson, Oldham, Shelby, Spencer, and Trimble counties.

(2) Zone 2 - Blue Grass Area: Anderson, Bath, Bourbon, Boyle, Clark, Estill, Fayette, Fleming, Franklin, Garrard, Harrison, Jackson, Jessamine, Lee, Lincoln, Madison, Menifee, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford counties.

(3) Zone 3 - Eastern and Northeastern Area: Boone, Boyd, Bracken, Campbell, Carter, Elliott, Gallatin, Grant, Greenup, Kenton, Lawrence, Lewis, Mason, Pendleton, Robertson, and Rowan counties.

(4) Zone 4 - Kentucky Mountain, Southeastern and South Central Area: Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Floyd, Green, Harlan, Johnson, Knott, Knox, Laurel, Leslie, Letcher, Magoffin, Marion, Martin, McCreary, Metcalfe, Monroe, Morgan, Owsley, Perry, Pike, Pulaski, Russell, Taylor, Washington, Wayne, Whitley, and Wolfe counties.

(5) Zone 5 - Green River and Pennyrile Area: Allen, Barren, Butler, Daviess, Edmonson, Hancock, Hart, Henderson, Logan, McLean, Ohio, Simpson, and Warren counties.

(6) Zone 6 - Southwestern and West Central Area: Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, Muhlenberg, Todd, Trigg, Union, and Webster counties.

Section 2. Vacancies for the position of dental hygienist on the board shall be filled by candidates selected according to the following geographic chart with one (1) member being selected from each of the Zones 1 and 2:

(1) Zone 1 - East: Adair, Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carter, Casey, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Green, Greenup, Harlan, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Marion, Martin, Mason, McCreary, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Nelson, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott, Taylor, Washington, Wayne, Whitley, Wolfe, and Woodford counties.

(2) Zone 2 - West: Allen, Ballard, Barren, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hardin, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Oldham, Shelby, Simpson, Spencer, Todd, Trigg, Trimble, Union, Warren, and Webster counties.

Section 3. The board shall notify each licensed dentist and dental hygienist of an upcoming election and the need for nominations at least sixty (60) days prior to the nomination deadline by publishing the notice of election on the board's Web site, by electronic communications with the respective associations, and in written communication to all resident licensees. The notice of elections shall include the steps to nominate an individual for an open position, the date nominations will cease, the date the election will be held, and the manner in which the election will be held.

Section 4. Nominations shall be sent to the office of the board at least fifteen (15) days prior to the election in order that the candidates may consent to or decline their nominations before the election. Nominations received after the fifteen (15) day deadline shall not be accepted.

Section 5. Appointment of Committee Members and Committee Chairpersons. (1) The chairpersons and members of a standing committee of the board shall be appointed by the board president and shall be subject to approval by the board.

(2) A task force may be created:

(a) At the request of any board member subject to a majority vote of the board members; or

(b) At the discretion of the board president.

(3) Chairpersons and members of a task force created under Section 5(2)(a) of this administrative regulation shall be appointed by a majority vote of the board members. Chairpersons and members of a task force created under Section 5(2)(b) of this administrative regulation shall be appointed by the board president.

(4) Staff members of the office of the board may serve as nonvoting ex officio members of any committee, standing committee, or task force created under KRS Chapter 313 or the administrative regulations promulgated there under.

(5) Standing committee members shall have a term which expires September 30 of each calendar year. All reappointments shall be made by the board no later than September 30.

(6) Only a standing committee or task force chairperson or vice-chairperson in the absence of the chairperson may bring reports or recommendations before the board for action. All reports to the board shall be submitted in written format.

(7) A task force shall cease to exist at the close of its work. A member of a task force shall not serve for a period of more than one (1) year without reappointment. A task force shall serve at the pleasure of the board. A task force may be dissolved at any time by a majority vote of the board members.

(8) When a task force is created, the board president shall give a specific written charge to the task force with guidelines, as appropriate. The board president may establish a reporting deadline for the completion of the specific written charge.

(9) Task force members shall serve without compensation unless they are board members eligible for compensation under 2010 Ky. Acts ch. 85, sec. 2(7).

Section 6. Standing Committees of the Board. (1) Executive Committee. The executive committee shall:

(a) Address legislative issues and proposals and review administrative regulations for submission to the board, including recommending to the board the promulgation of administrative regulations, amendment of administrative regulations, or repeal of administrative regulations relating to:

1. All levels of personnel licensed, certified, or registered by the board; and

2. Rules and operating procedures for the board and each of its standing committees and task forces;

(b) Serve as a resource for board staff:

1. By creating and recommending to the board a biennial budget for the board prior to submission to appropriate state agencies;

2. By identifying, developing, and recommending to the board sources of funding for its programs; and

(c) Make recommendations to the board regarding fees to be charged by the board.

(2) Credentials Committee. The credentials committee shall review the credentials of individuals applying for licensure as a dentist or dental hygienist and make recommendations for acceptance or denial to the full board based on the requirements set forth by 201 KAR 8:530 and 8:560.

(3) Law Enforcement Committee. The law enforcement committee shall be involved with the disciplinary actions of individuals licensed or registered or who are applicants for licensure or registration by the board pursuant to 2010 Ky. Acts ch. 85, sec. 14-17. Members of this committee shall sign a confidentiality agreement with the board and shall be subject to disciplinary action of the full board if found to violate this agreement.

Section 7. Agendas. (1) A person desiring a matter to be placed on the agenda for a regular board meeting shall submit a written request to the executive director not less than twenty (20) working days prior to the board meeting.

(2) The request shall contain the following information:

(a) The matter requested to be placed before the board;

(b) The action desired on the matter;

(c) Documentation in support of the request;

(d) The name, address, telephone number, and other contact methods as may be necessary to contact the person or organization submitting the request; and

(e) The name, address, telephone number, and other contact methods as may be necessary to contact each person requesting to speak on behalf of the request at the board meeting.

(3) Not less than seven (7) working days prior to the board meeting, the president of the board shall set the agenda and cause its publication on the board's Web site and in writing. Written copies of the agenda may be obtained from the executive director after it is made public. The board may charge a reasonable fee for the provision of an agenda by mail, fax, or in hard copy. Following publication, the agenda shall be available for inspection at the office of the board.

(4) The submission of a request for a matter to be placed on the agenda at a regular board meeting shall not guarantee that the matter will be placed on the agenda, or the sequential order on the agenda of a matter approved for the agenda.

(5) The board shall adhere to the published agenda at a regular board meeting, unless the board takes action to amend the agenda.

Section 8. Quorum. (1) The board shall transact business so long as it has convened with a quorum present.

(2) A simple majority of appointed members shall constitute a quorum for standing committee and task force committee meetings.

Section 9. Voting. (1) Voting shall be accomplished by one (1) of the following methods:

(a) Voice vote;

(b) A show of hands; or

(c) A roll call vote.

(2) In order for the board to take action on a routine matter, other than those set forth Section 9(3) of this administrative regulation, a majority of board members present shall have agreed to the action.

(3) In order for the board to take action on the following matters, two-thirds of the members of the board shall have agreed to the action:

(a) Promulgate, amend, or repeal an administrative regulation;

(b) Appoint, direct, or hire by personal service contract the executive director or general counsel;

(c) Discipline or action regarding statutory employees;

(d) Initiate a legal action on behalf of the board;

(e) Hire outside legal counsel to defend the board in a legal action against the board, a member of the board acting in their official capacity, or an employee of the board acting in their official capacity, or for other specified purpose;

(f) Adopt a proposed budget for the board;

(g) Authorize the expenditure of more than $10,000, unless the amount is a routine budgeted expenditure;

(h) Take action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(i) Take an action at an emergency meeting of the board.

(4) A supermajority of the members present at a meeting shall be required in order for the board to approve or deny an application for licensure by credentials.

Section 10. Attendance of Board Staff and Employees at a Board Meeting. (1) The following staff of the board shall attend each board meeting, unless excused in writing by the president of the board or excused from the meeting by action of the board:

(a) Executive director; and

(b) General counsel.

(2) An employee of the board, other than one (1) specified in Section 10(1) of this administrative regulation shall attend a meeting of the board if requested to do so by the president of the board or the executive director.

(3) An employee of the board, other than one specified in Section 10(1) of this administrative regulation may attend a meeting of the board as part of their state duty time with the permission of the president of the board or the executive director.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the organization of the board, the procedure for elections, and the structure of committees of the board. 2010 Ky. Acts ch. 85, sec. 2 and 3 direct the make up of the board

and the conduct of its business affairs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the appointment of board members and to direct the board in the conduct of its affairs.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the appointments to and make up of the board and the conduct of the board's affairs as required by 2010 Ky. Acts ch. 85, sec. 2 and 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information necessary about the appointments to and make up of the board and the conduct of the board's affairs as required by 2010 Ky. Acts ch. 85, sec. 2 and 3.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the Kentucky Board of Dentistry 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 Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: 201 KAR 8:520E provides the fees to be paid by licensees which makes the board fully self funded and financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation does not affect licensees.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:510. Advisory opinions.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 3(1)(k)

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 3(1)

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 3(1) authorizes the board to issue advisory opinions. This administrative regulation establishes the procedures for submission, consideration, and disposition of a request for an advisory opinion.

Section 1. Form of Request. (1) The request shall be signed by one (1) or more persons, with each signer's mailing address and telephone number, and if available, fax number and e-mail address, clearly indicated. If a person signs on behalf of a corporation or association, the name of the entity, the address, telephone number, and fax number of the entity shall be included. The signer shall date the request.

(2) The request shall be submitted on the Advisory Opinion Request Form.

Section 2. Consideration. (1) The board president, or his designee in writing, may schedule an informal meeting between the requester, any interested persons, and a representative of the board, to present information and discuss questions raised. A final

decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the board shall:

(a) Consider all materials submitted with the request;

(b) Consider any relevant document, data, or other material; and

(c) Consider comments from the board's staff.

(3) The board may:

(a) Consult experts or other individuals as it deems necessary;

(b) Require argument of the question; or

(c) Permit the introduction of evidence.

Section 3. Issuance of Opinion or Refusal to Issue an Opinion. The board shall issue an advisory opinion in response to the request, unless one (1) of the following applies:

(1) The board does not have jurisdiction over the questions presented in the request;

(2) The questions presented are pending in a disciplinary matter, or other board or judicial proceeding which may definitively decide the issues;

(3) The questions presented by the request would be more properly resolved in a different type of proceeding;

(4) The facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an opinion;

(5) There is no need to issue an opinion because the questions raised in the request have been settled due to a change in circumstances;

(6) The requester is asking the board to determine whether a statute is unconstitutional; or

(7) The board concludes an opinion would not be in the public interest.

Section 4. Publication of Advisory Opinions. (1) All advisory opinions shall be published and maintained by the office of the board. Publication shall be made by hard copy and by placing the entire opinion on the board's Web site.

(2) All names or references which allow for the identification of parties shall be redacted from the final published advisory opinion.

(3) An index of all final published advisory opinions shall be maintained by the office of the board. The index shall include the subject of each opinion, its publication date, and any prospective changes effectuated by the opinion.

Section 5. Reconsideration and Appeals. (1) Any person may request the board to reconsider a published advisory opinion within ten (10) working days of the publication of the opinion.

(2) The request for reconsideration shall be submitted on the Advisory Opinion Request Form.

(3) Requests for reconsideration shall contain:

(a) A clear and concise statement of the grounds for the reconsideration;

(b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;

(c) Any supportive statute, administrative regulation, document, order or other statements of law or policy, with an explanation of the relevance of the material offered; and

(d) A statement of adverse impact, if any, resulting from the published advisory opinion.

(4) Any notice of appeal to the Franklin Circuit Court filed pursuant to 2010 Ky. Acts ch. 85, sec. 15 shall be served upon the board president, the executive director and the general counsel for the board.

Section 6. Incorporation by Reference. (1) "Advisory Opinion Request Form", July 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for requesting an advisory opinion from the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the requirements of 2010 Ky. Acts ch. 85, sec. 3(1)(k).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information about the procedure for requesting an advisory opinion as required by 2010 Ky. Acts ch. 85, sec. 3(1)(k).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information about the procedure for requesting an advisory opinion as required by 2010 Ky. Acts ch. 85, sec. 3(1)(k).

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the Kentucky Board of Dentistry 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 Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth and further charged in 2010 Ky. Acts ch. 85 sec. 3(1)(k) to make advisory opinions thru a process set in administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry

is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: 201 KAR 8:520E provides the fees to be paid by licensees which makes the board fully self funded and financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

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

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:520. Fees and fines.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 4, 2010 Ky. Acts ch. 85, sec. 5, 16(2)(c)

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 4

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 4 requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a general dental license applied for in a nonrenewal year shall be $325.

(2) The initial licensure fee for a general dental license applied for in a renewal year shall be $175.

(3) The renewal fee for a general dental license appropriately renewed on or before the expiration of the license shall be $295.

(4) The renewal reinstatement fee for a general dental license renewed between January 1 and January 15 of the year following the expiration of the license shall be $280 in addition to the renewal fee.

(5) The renewal reinstatement fee for a general dental license renewed between January 16 and January 31 of the year following the expiration of the license shall be $560 in addition to the renewal fee.

(6) The renewal reinstatement fee for a general dental license renewed on or after February 1 of the year following the expiration of the license shall be $1,120 in addition to the renewal fee.

(7) The initial fee for a dental anesthesia or sedation permit shall be $250.

(8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.

(9) The initial fee for an anesthesia or sedation facility certificate shall be $250.

(10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(11) The specialty license application fee shall be $100.

(12) The specialty license renewal fee shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

(13) The fee for reinstatement of a properly retired general dental license shall be $350.

(14) The fee for reinstatement of a properly retired specialty license shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in a nonrenewal year shall be $125.

(2) The initial licensure fee for a dental hygiene license applied for in a renewal year shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately renewed on or before the expiration of the license shall be $110.

(4) The renewal reinstatement fee for a dental hygiene license renewed between January 1 and January 15 of the year following the expiration of the license shall be $130 in addition to the renewal fee.

(5) The renewal reinstatement fee for a dental hygiene license renewed between January 16 and January 31 of the year following the expiration of the license shall be $260 in addition to the renewal fee.

(6) The renewal reinstatement fee for a dental hygiene license renewed on or after February 1 of the year following the expiration of the license shall be $520 in addition to the renewal fee.

(7) The initial dental hygiene anesthesia registration fee shall be fifty (50) dollars.

(8) The initial dental hygiene general supervision registration fee shall be fifty (50) dollars.

(9) The initial dental hygiene intravenous access line registration fee shall be fifty (50) dollars.

(10) The initial dental hygiene laser debridement registration fee shall be fifty (50) dollars.

(11) The fee for reinstatement of a properly retired dental hygiene license shall be $125.

Section 3. Registered Dental Assistants. The initial registered dental assistant intravenous access line registration fee shall be fifty (50) dollars.

Section 4. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) The fee for a duplicate license shall be twenty-five (25) dollars.

(3) The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

(a) $100 for lists obtained for not-for-profit use; and

(b) $1,000 for lists obtained for profit use.

(4) The fee for a query of the National Practitioner Data Bank shall be twenty-five (25) dollars.

(5) The fee for a paper copy of the Dental Practice Act shall be fifty (50) dollars.

(6) The fee for any returned check or rejected electronic payment shall be twenty-five (25) dollars.

Section 5. General Fines. (1) Fines may be agreed to by settlement agreement in addition to the fines listed in this section.

(2) The costs of a disciplinary action taken as a result of a hearing shall be equal to the amount of all actual and necessary costs associated with the hearing.

(3) If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be $200 per hour deficient.

(4) The fine for failure of a follow-up infection control inspection shall be $1,000.

(5) The fine for failure of a follow-up anesthesia and sedation facility inspection, performed no sooner than twenty (20) days following an initial failed inspection, shall be $2,500.

Section 6. All fines and fees paid to the board are nonrefundable.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions, which is mandated by 2010 Ky. Acts ch. 85, sec. 4.

(b) The necessity of this administrative regulation: 2010 Ky. Acts ch. 85, sec. 4 requires the board to promulgate administrative regulations to establish fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

(c) How this administrative regulation conforms to the content of the authorizing statute: 2010 Ky. Acts ch. 85, sec. 4 requires the board to establish fees and fines that do not exceed the national average, which is what this administrative regulation does.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides all of the funding by which the board operates.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any individual licensed or registered by the board. To date there are approximately 3,119 currently licensed dentists and approximately 125 new applicants per year as well as 2,402 dental hygienist currently licensed by the board and approximately 100 new applicants per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order 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): Compliance with this administrative regulation will cost licensees the amount specified in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to practice dentistry, dental hygiene, or dental assisting in the Commonwealth of Kentucky.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists, dental hygienists, and dental assistants as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in this administrative regulation make the agency financially solvent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation both establishes fees and makes adjustments to the board's current fee structure without exceeding national or regional averages as directed by 2010 Ky. Acts ch. 85.

(9) TIERING: Is tiering applied? This administrative regulation applies tiering by establishing different fees for different levels of licensure or registration. Different costs reflect both the different levels of responsibility of each type of licensee and also the differ-

ence in the cost to administer different types of licenses.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:530. Licensure of dentists.

RELATES TO: KRS 214.615, 2010 Ky. Acts ch. 85, sec. 5, 6, 13, 17, 22

STATUTORY AUTHORITY: KRS 214.615(2), 2010 Ky. Acts ch. 85, sec. 3(1)(a), (b), (c), 2010 Ky. Acts ch. 85, sec. 6(1), (3), 22

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 6 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes those requirements and procedures.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed and signed Application for Dental Licensure;

(3) Pay the fee required 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;

(11) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2015, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); and

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2015, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental education shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Com-

monwealth of Kentucky.

Section 4. Requirements for Student Limited Licensure. (1) Each individual desiring a student limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into a the program and the expected date of completion;

(c) Submit a signed Statement Regarding Student Licensure Limitations; and

(d) Submit an official final transcript of his dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and may only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.

(4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.

(5) Nothing in this section shall prohibit:

(a) Students from performing dental operations under the supervision of competent instructors within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize the students of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. No fee shall be accepted by the student beyond the expenses provided by the stipend;

(b) Student limited license holders from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) Volunteer health practitioners from providing services under KRS 39A.350-366.

Section 5. Requirements for Faculty Limited Licensure. (1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed Statement Regarding Faculty Licensure Limitations; and

(d) Submit an official final transcript of his dental coursework with degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and may only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A programs employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists. (1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based examination or a score of 116 on the internet-based examination, if English is not the applicant's native language;

(b) Submit a completed and signed Application for Dental Licensure;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(e) Provide proof of having completed the requirements of KRS 214.615(1);

(f) Complete and pass the board's jurisprudence exam;

(g) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(h) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(i) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(j) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(k) Submit one (1) letter of recommendation from the program director of each training site;

(l) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(m) Provide proof of successfully completing within the five (5) years prior to application a clinical examination approved in Section 2(2) of this administrative regulation; and

(n) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his post-graduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

Section 7. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed Application for Charitable Dental Licensure;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(d) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services which have met the requirements of 2010 Ky. Acts ch. 85, sec. 22 and 201 KAR 8:580;

(b) Only perform procedures allowed by 2010 Ky. Acts ch. 85, sec. 22, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license which shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by 2010 Ky. Acts ch. 85, sec. 1 shall:

(1) Submit a completed and signed Application for Specialty Licensure;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

Section 9. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education which relates to or advances the practice of dentistry and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including, but not limited to, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects including, but not limited to, clinical techniques and procedures, materials, and equipment;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry which meets the requirements of 2010 Ky. Acts ch. 85, sec. 22;

(j) Knowledge of office business operations and best practices; or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken which meet the requirements of subsection (2)(h)-(k) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as outlined in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At the time of license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 10. Requirements for Renewal of a Dental License. (1) Each individual desiring renewal of an active dental license shall:

(a) Submit a completed and signed Application for Renewal of Dental Licensure;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification which meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education for healthcare providers; and

(e) Meet the continuing education requirements as outlined in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

Section 11. Retirement of a License. (1) Each individual desiring retirement of a dental license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board will send written confirmation of retirement to the last known address of the licensee.

(3) No individual may retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 12. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a signed and completed Application to Reinstate a Dental License;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR which meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of his license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or the administrative regulations promulgated there under.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Licensure", July 2010;

(b) "Statement Regarding Student Licensure Limitations", July 2010;

(c) "Statement Regarding Faculty Licensure Limitations", July 2010;

(d) "Application for Charitable Dental Licensure," July 2010;

(e) "Application for Specialty Licensure", July 2010;

(f) "Application for Renewal of Dental Licensure", July 2010;

(g) "Retirement of License Form", July 2010;

(h) "Application to Reinstate a Dental License", July 2010;

(i) "Verification of Licensure or Registration Form", July 2010; and

(j) "Duplicate License or Registration Form", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dentists as mandated by 2010 Ky. Acts ch. 85, sec. 6.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 6, which requires the board to promulgate administrative regulations regarding the licensure of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by 2010 Ky. Acts ch. 85, sec. 6.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the procedure for the licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by 2010 Ky. Acts ch. 85, sec. 6.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 3,119 currently licensed dentists and approximately 125 new applicants per year. Additionally, the Kentucky Board of Dentistry 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: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): From 201 KAR 8:520E:

(1) The initial licensure fee for a general dental license applied for in a nonrenewal year shall be $325.

(2) The initial licensure fee for a general dental license applied for in a renewal year shall be $175.

(3) The renewal fee for a general dental license appropriately renewed on or before the expiration of the license shall be $295.

(4) The renewal reinstatement fee for a general dental license renewed between January 1 and January 15 of the year following the expiration of the license shall be $280 in addition to the renewal fee.

(5) The renewal reinstatement fee for a general dental license renewed between January 16 and January 31 of the year following the expiration of the license shall be $560 in addition to the renewal fee.

(6) The renewal reinstatement fee for a general dental license renewed on or after February 1 of the year following the expiration of the license shall be $1,120 in addition to the renewal fee.

(7) The initial fee for a dental anesthesia or sedation permit shall be $250.

(8) The renewal fee for a dental anesthesia or sedation permit shall be $75 and is in addition to the renewal fee for a general dental license.

(9) The initial fee for an anesthesia or sedation facility certificate shall be $250.

(10) The renewal fee for an anesthesia or sedation

facility certificate shall be $75.

(11) The specialty license application fee shall be $100.

(12) The specialty license renewal fee shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license.

(13) The fee for reinstatement of a properly retired general dental license shall be $350.

(14) The fee for reinstatement of a properly retired specialty license shall be fifty (50) dollars and is in addition to the renewal fee for a general dental license. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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? This administrative regulation applies tiering by identifying each classification of licensure available to dentists in the Commonwealth of Kentucky. General dental licenses are the standard, full license type available, and applicants are therefore subject to the full complement of requirements. Reporting requirements are reduced for student, faculty, and charitable limited license applicants as they are subject to restrictions of practice. Specialty license holders are subject to additional reporting requirements as they hold a more advanced license than general dentists.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:540. Dental practices.

RELATES TO: 42 U.S.C. sec. 300ee-2 note, 2010 Ky. Acts ch. 85, sec. 10

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 10(1)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Section 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines which are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures, and 2010 Ky. Acts ch. 85, sec. 10(1) requires the board to promulgate administrative regulations relating to dental practices which shall include minimal requirements for documentation and Centers for Disease Control compliance. This administrative regulation establishes these requirements.

Section 1. Definition. "Invasive procedure" means any procedure which penetrates hard or soft tissue.

Section 2. Minimum Documentation Standards for all Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth (18) birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) Each patient record for a dental patient in the Commonwealth of Kentucky shall include at a minimum:

(a) The patient's name;

(b) The patient's date of birth;

(c) The patient's medical history;

(d) The date of treatment;

(e) The tooth number, surfaces, or areas to be treated;

(f) The material used in treatment;

(g) Local or general anesthetic used, the type, and the amount;

(h) Sleep or sedation dentistry medications used, the type, and the amount; and

(i) A complete list of prescriptions provided to the patient, the amount given, and the number of refills indicated.

Section 3. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the universal precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same universal precautions.

(2) The board or its designee may perform an infection control inspection of a dental practice utilizing the Infection Control Inspection Checklist.

(3) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board. The dentist may receive a second inspection after the thirty (30) days have passed. If the dentist fails the second inspection they shall be immediately temporarily suspended pursuant to 2010 Ky. Acts ch. 85, sec. 14 until proof of compliance is provided to the board and they shall pay the fine as prescribed in 201 KAR 8:520.

(4) Any licensed dentist, licensed dental hygienist, registered dental assistant, or dental assistant in training for registration who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or his designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 4. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

(1) Provide written notice to the patient of the termination;

(2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and

(3) Retain a copy of the letter of termination in the patient records.

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

(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and

(b) "Infection Control Inspection Checklist", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, infection control, and termination of the doctor patient relationship as required by 2010 Ky. Acts ch. 85, sec. 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and other parts of the dental practice.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and other parts of the dental practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and other parts of the dental 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: 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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 3,119 dentist currently licensed by the board as well as any new dentist licensed by the board in the future. Additionally, the Kentucky Board of Dentistry 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: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(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 new cost to the licensees with this emergency administrative regulation. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dentists as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 licensed dentist.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:560. Licensure of dental hygienists.

RELATES TO: KRS 214.615, 2010 Ky. Acts ch. 85, sec. 5, 2010 Ky. Acts ch. 85, sec. 7, 10, 13, 17, 22

STATUTORY AUTHORITY: KRS 214.615(2), 2010 Ky. Acts ch. 85, sec. 3(1)(a)-(c), 7(1), (2), (7), 22(8)

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 7 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes those requirements and procedures.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed and signed Application for Dental Hygiene Licensure;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(11) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his application.

(a) Prior to July 15, 2015, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); or

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2015, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3)

times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene when he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed Application for Charitable Dental Hygiene Licensure;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 which would prevent licensure;

(d) Have a license to practice dental hygiene in good standing in another state; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) Individuals licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services which have met requirements of 2010 Ky. Acts ch. 85, sec. 22 and 201 KAR 8:580;

(b) Only perform procedures allowed by 2010 Ky. Acts ch. 85, sec. 22, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer; and

(e) Have a charitable limited license which will be good for two (2) years and expire during the regular dental hygiene renewal cycle.

Section 5. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education which relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, but not limited to, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects including, but not limited to, clinical techniques and procedures, materials, and equipment;

(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene which meets the requirements of 2010 Ky. Acts ch. 85, sec. 22;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken which meet the requirements of subsection (2)(g)-(j) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as outlined in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At the time of license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License. (1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed and signed Application for Renewal of Dental Hygiene Licensure;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification which meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education of healthcare providers; and

(e) Meet the continuing education requirements as outlined in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License. (1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board will send written confirmation of retirement to the last known address of the licensee.

(3) No individual may retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 8. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a signed and completed Application to Reinstate a Dental Hygiene License;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR which meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 11. Requirements for Local Anesthesia Registration. (1) An individual who has completed a course of study in dental hygiene at a board-approved CODA accredited institution on or after July 15, 2010, which meets or exceeds the education requirements as set forth in 2010 Ky. Acts ch. 85, sec. 10(10) shall be granted the authority to practice local anesthesia upon the issuance by the board of a dental hygiene license.

(2) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia and does not qualify to do so under Section 12(1) of this administrative regulation shall complete a training and education course as described in 2010 Ky. Acts ch. 85, sec. 10(10).

(3) The training and education course shall be offered by one (1) of the following institutions in Kentucky:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program;

(d) Lexington Community College Dental Hygiene Program; and

(e) Kentucky Community Technical College System Dental Hygiene Programs.

(3) Training received outside of Kentucky shall be from a CODA accredited dental or dental hygiene school and shall meet the requirements established in 2010 Ky. Acts ch. 85, sec. 10(10).

(4) Once the required training is complete the applicant shall:

(a) Complete the Dental Hygiene Local Anesthesia Registration Application; and

(b) Pay the fee required by 201 KAR 8:520.

(5) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to administer local anesthesia.

(6) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(7) Any licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board approved refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the General Supervision Registration Application;

(b) Meet the requirements of 2010 Ky. Acts ch. 85, sec. 7(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable the dates and hours of employment by a dentist in the practice of dental hygiene which demonstrate the required two (2) years and 3,000 hours of experience;

(d) Successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies which shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) Individuals authorized to practice under these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to 2010 Ky. Acts ch. 85, sec. 7(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services under 2010 Ky. Acts ch. 85, sec. 7(7) as part of the General Supervision Registration Application.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as listed in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, 2007 Edition, American Dental Association.

(8) A licensed dental hygienist shall not practice under general

supervision if the licensee does not hold a general supervision registration issued by the board.

Section 13. Requirements for Starting Intravenous Access Lines. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

(b) Pay the fee required by 201 KAR 8:520;

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start IV access lines if the licensee does not hold a registration to start IV access lines issued by the board.

Section 14. Requirements for Performing Laser Debridement. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to perform laser debridement while under the direct supervision of a dentist licensed by the board shall:

(a) Submit a signed and completed Application for Laser Debridement Registration;

(b) Pay the fee required by 201 KAR 8:520;

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) Individuals authorized to practice under this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not hold a registration to do so issued by the board.

Section 15. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or the administrative regulations promulgated thereunder.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Hygiene Licensure", July 2010;

(b) "Application for Charitable Dental Hygiene Licensure", July 2010;

(c) "Application for Renewal of Dental Hygiene Licensure", July 2010;

(d) "Retirement of License Form", July 2010;

(e) "Application to Reinstate a Dental Hygiene License", July 2010;

(f) "Verification of Licensure or Registration Form", July 2010;

(g) "Duplicate License or Registration Request Form", July 2010;

(h) "Dental Hygiene Local Anesthesia Registration Application", July 2010;

(i) "General Supervision Registration Application", July 2010;

(j) "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", 2007 Edition;

(k) "Application for Intravenous Access Line Registration", July 2010; and

(l) "Application for Laser Debridement Registration", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dental hygienist as mandated by 2010 Ky. Acts ch. 85, sec. 7. This administrative regulation also establishes the requirements for the administration of local anesthesia by a licensed dental hygienist as required in 2010 Ky. Acts ch. 85 sec. 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements and procedures for the licensure of dental hygienist as mandated by 2010 Ky. Acts ch. 85, sec. 7 and establishes the requirements for the administration of local anesthesia by a licensed dental hygienist as required in 2010 Ky. Acts ch. 85 sec. 10.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 7 and 10, which requires the board to promulgate administrative regulations regarding the requirements the licensure of dental hygienist and the requirements for the administration of local anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 7 and 10, which requires the board to promulgate administrative regulations regarding the requirements the licensure of dental hygienist and the requirements for the administration of local anesthesia.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 2,402 dental hygienist currently licensed by the board as well as any new dental hygienist licensed by the board in the future. Additionally, the Kentucky Board of Dentistry 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: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the fees established in 201 KAR 8:520E are:

1. The initial licensure fee for a dental hygiene license applied for in a non-renewal year shall be $125.

2. The initial licensure fee for a dental hygiene license applied for in a renewal year shall be seventy-five (75) dollars.

3. The renewal fee for a dental hygiene license appropriately renewed on or before the expiration of the license shall be $110.

4. The renewal reinstatement fee for a dental hygiene license renewed between January 1 and January 15 of the year following the expiration of the license shall be $130 in addition to the renewal fee.

5. The renewal reinstatement fee for a dental hygiene license renewed between January 16 and January 31 of the year following the expiration of the license shall be $260 in addition to the renewal fee.

6. The renewal reinstatement fee for a dental hygiene license renewed on or after February 1 of the year following the expiration of the license shall be $520 in addition to the renewal fee.

7. The initial dental hygiene anesthesia registration fee shall be fifty (50) dollars.

8. The initial dental hygiene general supervision registration fee shall be fifty (50) dollars.

9. The initial dental hygiene intravenous access line registration fee shall be fifty (50) dollars.

10. The initial dental hygiene laser debridement registration fee shall be fifty (50) dollars.

11. The fee for reinstatement of a properly retired dental hygiene license shall be $125. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees who are in compliance will have the legal ability to practice dental hygiene in the Commonwealth of Kentucky. Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees to legally practice dentistry in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this regulation are fully funded by licensing fees paid by dental hygienist as part of compliance with this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 is applied in as much as the dental hygienist wishes to undertake additional responsibilities allowed under the authority of the dentist for which he works. This administrative regulation establishes additional requirements for individual wishing to practice under the general supervision of the dentist, use lasers for debridement, or establish inter venous access on patients.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:570. Registration of dental assistants.

RELATES TO: KRS 214.615, 2010 Ky. Acts ch. 85, sec. 5, 8, 9, 13, 17

STATUTORY AUTHORITY: KRS 214.615(2), 2010 Ky. Acts ch. 85, sec. 3(1)(a), (b), (c), 8(1)

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 8(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes those requirements and procedures.

Section 1. Definition. "Coronal polishing" means a procedure which is adjunctive to the dental prophylaxis which is performed by a licensed dentist or dental hygienist.

Section 2. General Registration Requirements. (1) An applicant desiring registration as a dental assistant in the Commonwealth

shall at a minimum:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed Application for Dental Assistant Registration;

(c) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 which would prevent registration;

(d) Provide proof of completion of the requirements of KRS 214.615(1);

(e) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(f) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(g) Provide proof of one (1) year dental office experience along with the name and address of the supervising dentist.

(2) Any individual practicing as a dental assistant in the Commonwealth of Kentucky on July 15, 2010, shall apply for registration no later than July 15, 2011.

(3) Any individual who has successfully completed a CODA accredited dental assisting program may register with the board without proving one (1) year of dental office experience.

Section 3. Issuance of Initial Registration. Once an applicant has completed the requirements of Section 2 of this administrative regulation the board shall:

(1) Issue a registration in sequential numerical order; or

(2) Deny registration due to a violation of KRS Chapter 313 or the administrative regulations promulgated there under.

Section 4. General Training Requirements. (1) A registered dental assistant may perform any duty on the delegated duty list, which is incorporated by reference, so long as the individual has been trained by the employing dentist and the dentist retains proof of the training.

(2) Proof of training shall include the following:

(a) Name of the individual trained;

(b) Name of the individual providing the training;

(c) Date the training was completed; and

(d) A list of specific duties delegated to the assistant from the delegated duty list.

(3) This training may be conducted prior to the registration of the dental assistant if the training is documented by the employing dentist.

Section 5. Coronal Polishing Requirements. (1) A registered dental assistant may perform coronal polishing if he or she:

(a) Completes the training described in subsection (2) of this section; and

(b) Obtains a certificate from the authorized institution, which shall be provided to the board for the assistant's file and maintained in the employee's personnel file at each place of employment.

(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:

(a) Overview of the dental team;

(b) Dental ethics, jurisprudence and legal understanding of procedures allowed by each dental team member;

(c) Management of patient records, maintenance of patient privacy, and completion of proper charting;

(d) Infection control, universal precaution, and transfer of disease;

(e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;

(f) Definition of plaque, types of stain, calculus, and related terminology and topics;

(g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;

(h) Ergonomics of proper positioning of patient and dental assistant;

(i) General principles of dental instrumentation;

(j) Rationale for performing coronal polishing;

(k) Abrasive agents;

(l) Coronal polishing armamentarium;

(m) Warnings of trauma which can be caused by improper techniques in polishing;

(n) Clinical coronal polishing technique and demonstration;

(o) Written comprehensive examination covering the material listed in this section, which shall be passed by a score of seventy-five (75) percent or higher;

(p) Completion of the reading component as required by subsection (3) of this section; and

(q) Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.

(3) A required reading component for each course shall be prepared by each institution offering coronal polishing education which shall:

(a) Consist of the topics established in subsection (2)(a) to (n) of this section;

(b) Be provided to the applicant prior to the course described in subsection (2) of this section; and

(c) Be reviewed and approved by the board.

(4) The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program;

(d) Lexington Community College Dental Hygiene Program; and

(e) Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.

Section 6. X-rays by Registered Dental Assistants. A registered dental assistant may take x-rays under the direct supervision of a dentist licensed in Kentucky if the assistant completes:

(1) A six (6) hour course in dental radiography safety approved by the board; and

(2) Four (4) hours of instruction in dental radiography technique while under the employment and supervision of the dentist in the office; or

(3) A four (4) hour course in radiography technique approved by the board.

Section 7. Requirements for Starting Intravenous Access Lines. (1) An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

(b) Pay the fee required by 201 KAR 8:520;

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) Individuals authorized to practice under this provision shall receive a registration from the board indicating registration to start IV access lines.

(3) A registered dental assistant shall not start IV access lines if the registrant does not hold a registration to start IV access lines issued by the board.

Section 8. Renewal Requirements. An individual desiring renewal of an active dental assistant registration shall:

(1) Submit a completed and signed Application for Renewal of Dental Assistant Registration;

(2) Maintain with no more than a thirty (30) day lapse CPR certification which meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board; and

(3) Have their application signed by the supervising dentist as to their continued competency in the duties assigned to them from the delegated duties list.

Section 9. Expiration of a Registration. (1) A registration shall

expire:

(a) Upon termination of employment as a dental assistant under the direct supervision of a licensed dentist; or

(b) Upon the expiration date listed on the registration in the event that a registered dental assistant fails to renew the registration.

(2) Any registration issued by the board prior to December 31, 2010, shall be valid until December 31, 2012.

Section 10. Reciprocity. A registered dental assistant who does not meet the requirements of Section 5 of this administrative regulation may apply for and be granted a certificate to perform coronal polishing in the Commonwealth of Kentucky if he or she provides:

(1) Credentialing information which shall include:

(a) A copy of the credentials issued in the other jurisdiction; and

(b) A copy of the law and administrative regulations of that jurisdiction which specify requirements that are equal to or greater than the requirements established in 2010 Ky. Acts ch. 85, sec. 8 and this administrative regulation; or

(2) Educational information which shall include:

(c) A syllabus of course work successfully completed by the applicant from the accrediting dental hygiene or dental assisting program; and

(d) Verification of successful completion of the accredited course.

Section 11. Verification of Registration. An individual desiring verification of a dental assistant registration shall:

(1) Submit a signed and completed Verification of License or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 12. Duplicate Registrations. An individual desiring a duplicate dental assistant registration shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Assistant Registration", July 2010;

(b) "Delegated Duty List", July 2010;

(c) "Application for Intravenous Access Line Registration", July 2010;

(d) "Application for Renewal of Dental Assistant Registration", July 2010;

(e) "Verification of Licensure or Registration Form", July 2010; and

(f) "Duplicate License or Registration Request Form", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, Board President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the registration of dental assistants and establishes the requirements for training in coronal polishing for registered dental assistants as required by 2010 Ky. Acts ch. 85, sec. 8.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 8, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 8, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 8, which requires the board to promulgate administrative regulations regarding the requirements for the registration requirements, duties, training, and standards of practice for registered dental assistants.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new level of provider to be registered by the board so the number of individuals affected by this regulation is unknown. Additionally, the Kentucky Board of Dentistry 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: This regulation requires individuals to register with the board after having been trained for a minimum of one (1) year by a supervising dentist. The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth.

(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 new cost to the individual with this emergency administrative regulation. The board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regula-

tions but rather provides enforcement of the chapter and processes for it licensees to legally practice as a registered dental assistant in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 registered dental assistants.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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 Dentistry
(New Administrative Regulation)

201 KAR 8:580. Charity dental practices and postdisaster clinics.

RELATES TO: 2010 Ky. Acts ch. 85, sec. 22

STATUTORY AUTHORITY: 2010 Ky. Acts ch. 85, sec. 3(1), 22

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Ky. Acts ch. 85, sec. 3(1) requires the board to exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry, 2010 Ky. Acts ch. 85, sec. 10 requires the board to promulgate administrative regulations relating to dental practices, and 2010 Ky. Acts ch. 85, sec. 22 requires the board to promulgate administrative regulations relating to the charitable practice of dentistry. This administrative regulation establishes requirements for charitable dental practices and postdisaster clinics.

Section 1. Minimum Documentation Standards for All Dental Patients of a Charitable Dental Practice or Postdisaster Clinic. Each patient record for a dental patient of a charitable dental practice or postdisaster clinic in the Commonwealth of Kentucky shall include at a minimum:

(1) The patient's name;

(2) The patient's date of birth;

(3) The patient's medical history;

(4) The patient's dental history;

(5) The patient's current medications from all healthcare providers;

(6) The date of current treatment;

(7) The diagnosis;

(8) The treatment options presented to the patient;

(9) The tooth number and surfaces to be treated, which shall be included in the progress notes;

(10) The patient's current blood pressure reading;

(11) Informed consent by the patient; and

(12) Signature or initials of the provider.

Section 2. Documentation of Infection Control Procedures. All charitable dental practices and postdisaster clinics in the Commonwealth of Kentucky shall adhere to the universal precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention and shall retain documentation proving that:

(1) All workers have been educated in the charitable dental practice or postdisaster clinic procedures for infection control;

(2) All workers involved in patient treatment of have received a Hepatitis B vaccination or have signed a waiver;

(3) A policy is in place requiring all staff involved in clinical patient care to wear a fresh set of gloves for each patient;

(4) A policy is in place related to all staff changing gloves between patients;

(5) A policy is in place related to all staff wearing protective clothing during patient care;

(6) A policy is in place related to all staff wearing mask when procedures involve spatter;

(7) The charitable dental practice or postdisaster clinic contains the necessary supplies to comply with the aforementioned policies;

(8) All hand-pieces are sterilized following each patient treatment by one of the following means:

(a) Autoclave;

(b) Dry heat; or

(c) Heat or chemical vapor.

(9) There is routine verification that sterilization methods are functioning properly;

(10) Individual burs, hand instruments, and rotary instruments are either discarded or sterilized following each use;

(11) A policy is in place which addresses the disinfection of all operatory equipment and surfaces between patients;

(12) All surfaces that are difficult to disinfect are covered with a nonpenetrable barrier;

(13) A policy is in place requiring that all nonpenetrable surfac-

es are changed between patients;

(14) Disinfectant is used, including the name and type of the disinfectant;

(15) A policy is in place which describes a separate place for the cleaning, disinfecting, and sterilization of items, with a mechanism of separation from the patient treatment area that may be:

(a) An enclosed instrument table;

(b) Curtains or wall separation; or

(c) Bagging of the instruments;

(16) A policy is in place which provides for the protection of dental records, charts, and radiographs from biohazards while those items are in the patient treatment area, or if no protection exists, charts shall be readily reproducible with limited effort; and

(17) An agreement exists with an agency to properly dispose of all medical waste and biohazardous material, including sharps, instruments, and human tissue.

Section 3. Infection Control Inspections. (1) The board or its designee may perform an infection control inspection of a charitable dental practice or postdisaster clinic utilizing the Infection Control Inspection Checklist.

(2) Any charitable dental practice or postdisaster clinic which is found deficient upon an initial infection control inspection shall not be allowed to continue until the clinic coordinator provides proof to the board that the charitable dental practice or postdisaster clinic is in compliance.

Section 4. General Requirements for Charitable Dental Practices and Postdisaster Clinics. All charitable dental practices and postdisaster clinics in the Commonwealth shall comply with the following requirements:

(1) The clinic coordinator, who shall supervise and oversee all charitable dental practice or postdisaster clinic functions, shall be a Kentucky licensed dentist;

(2) There shall be a functional radiograph machine on site;

(3) Follow-up care provisions shall be in place for each patient requiring follow-up care;

(4) A written blood-borne pathogen exposure control plan shall be kept on site;

(5) A sharps stick protocol shall be followed in which:

(a) The entity that will collect specimens shall be identified prior to the start of the event; and

(b) The laboratory that will perform blood work analysis shall be identified prior to the start of the event.

(6) Postoperative instructions shall be delivered to the patient prior to the patient leaving;

(7) No dentist shall supervise more than six (6) students in a charitable dental practice or postdisaster clinic;

(8) All procedures shall be concluded by the end date of the charitable dental practice or postdisaster clinic unless a Kentucky licensed dentist has stated in writing that the licensee shall complete the procedure in a timely manner at his practice;

(9) All charitable dental practices with the exception of postdisaster clinics shall notify the board no less than thirty (30) days prior to the start of an event of the dates, locations, and host of the event;

(10) A charitable dental practice or postdisaster clinic shall provide the names and license numbers of all participating dentists and dental hygienists no later than fifteen (15) days postevent;

(11) All narcotics prescriptions written during an event shall be approved by a designated dental prescription coordinator who shall hold a full license to practice dentistry in the Commonwealth of Kentucky;

(12) A written emergency medical response plan shall be kept on site; and

(13) All charitable dental practices or postdisaster clinics larger than forty (40) chairs shall have at least one (1) Basic Life Support (BLS) ambulance on site for the duration of the event.

Section 5. Registered Dental Assistants and Auxiliary Personnel. (1) For the purpose of a charitable dental practice or postdisaster clinic, any individuals other than a licensed dentist or licensed dental hygienist shall be restricted to the duties of a dental auxiliary; and

(2) No one shall take radiographs without meeting the requirements of 201 KAR 8:570.

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

(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and

(b) "Infection Control Inspection Checklist", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

DR. WILLIAM P. BOGGESS, DMD, President

APPROVED BY AGENCY: July 10, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 31, 2010, at 9 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than August 24, 2010, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Brian K. Bishop, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email briank.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brian K. Bishop, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, infection control, and requirements to hold a charity clinic or post disaster clinic as required by 2010 Ky. Acts ch. 85, sec. 10 and 22.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10 and 22, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10 and 22, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2010 Ky. Acts ch. 85, sec. 10 and 22, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, infection control, and requirements to hold a charity clinic or post disaster clinic.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Dentistry will be affected by this administrative regulation. Additionally, any entity who desires to have a charity clinic in the Commonwealth will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Dentistry is charged by 2010 Ky. Acts ch. 85 to regulate the practice of dentistry in the Commonwealth. This regulations provides guidance to individuals who desire to offer a charity clinic in the Commonwealth and gives direction to protect the public during these clinics.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Board is a self funded agency who's budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The cost to the entities desiring to offer a charity clinic is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Board of Dentistry is the regulatory agency and accrues no benefits from the regulations but rather provides enforcement of the chapter and processes for it licensees offer a charity clinic in the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board is a self funded agency whose budget was approved in HB 1 of the 2010 Extraordinary Session of the General Assembly. HB 1 provided for FY 2010 - 2011 an allotment of $705,400 and for FY 2011 - 2012 and allotment of $714,000. The Kentucky Board of Dentistry receives no monies from the General Fund.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Dentistry is a fully self funded agency and derives it funding from fees paid by it 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: The fees found in 201 KAR 8:520E make the agency financially solvent.

(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 individuals or entities wishing to host a charity clinic or post disaster clinic.

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 Dentistry is the only state government entity which will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2010 Ky. Acts ch. 85

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 new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(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? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB 1 of the 2010 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? FY 2010 - 2011 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $705,400.

(d) How much will it cost to administer this program for subsequent years? FY 2011 - 2012 as allocated in HB 1 from the 2010 Extraordinary Session of the General Assembly is $714,000.

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
(New Administrative Regulation)

201 KAR 20:061. Doctor of Nursing Practice (DNP) degree.

RELATES TO: KRS 314.111, SB 127 (2010 RS)

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: SB 127 (2010 RS) requires the Board of Nursing to promulgate standards for the doctor of nursing practice (DNP) degree. This administrative regulation establishes those standards.

Section 1. Notification and Initial Approval for Accredited Programs. (1)(a) A postsecondary education institution that is currently accredited by the National League for Nursing Accrediting Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) and wishes to offer the doctor of nursing practice (DNP) degree shall notify the board in writing of its intent.

(b) The notification letter shall be accompanied by the fee required by 201 KAR 20:240.

(c) The notification letter shall indicate the desired date for the admission of the first class.

(d) The notification letter shall indicate that the Council on Postsecondary Education has also been notified.

(e) The notification letter shall include that the postsecondary education institution intends to apply for additional accreditation for the DNP degree.

(f) The notification letter shall indicate how the proposed track or degree complies with the provisions outlined in Section 2(1)(g) of this administrative regulation.

(2) When the notification letter is received by the board, the board shall grant the institution initial approval.

Section 2. Application and Initial Approval for Nonaccredited Programs. (1) Institutions not presently accredited by NLNAC or CCNE that desire to establish a DNP degree shall meet the following requirements:

(a) The governing institution that desires to establish and conduct a DNP program shall be accredited as outlined in 201 KAR 20:260, Section 1;

(b) The governing institution shall submit an application to establish a DNP degree which shall be accompanied by the fee required by 201 KAR 20:240;

(c) At the time that the application is submitted to the board, the program shall also begin the application process with NLNAC or CCNE;

(d) The application shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students;

(e) The application shall be completed under the direction of the registered nurse who shall serve as the designated nursing unit administrator as defined in 201 KAR 20:062;

(f) The program shall not advertise or enroll students until such time that the board has granted initial approval status;

(g) The application shall include:

1. General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, institutional faculty qualifications, and resources that are sufficient to support defined outcomes and goals;

2. Organizational chart of the governing institution and written plan which describes the organization of the program of nursing and its relationship to the institution;

3. Designation of NLNAC or CCNE as the national nursing accrediting body to be used in the development of the program;

4. Description and rationale for the proposed DNP degree;

5. Approval from the governing body of the institution proposing the DNP degree or other empowered approval bodies as applicable;

6. A copy of the curriculum vitae of the registered nurse identified as the designated head of the nursing unit;

7. Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

8. Evidence of support from the community of interest;

9. A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

10. Description of physical or virtual resources adequate to meet the needs of the faculty and students;

11. Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

12. Philosophy of the DNP program and program outcomes for graduates;

13. Curriculum design for each identified track to include proposed course sequence, description of courses, credit hours delineating those credits assigned to theory and practice;

14. Availability of experiential practice activities sufficient to accommodate the number of students and program outcomes;

15. A five (5) year plan for recruiting and retaining qualified nurse faculty; and

16. Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(2) A DNP program that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from NLNAC or CCNE shall be granted initial approval. This designation will be for no more than a two (2) year period of time pending review and approval by NLNAC or CCNE.

(3) When initial approval has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the designated head of the nursing unit to notify the board of the admission and graduation of the first class.

(4) Initial approval of a DNP program shall expire eighteen (18) months from the date of approval if a class of students is not admitted.

(5) All formal communication between the DNP program and the national nursing accrediting body shall be forwarded to the board within thirty (30) days of receipt.

(6) The designated head of the nursing unit shall notify the board within five (5) business days of any change in accreditation status.

(7) The designated head of the nursing unit shall notify the board of pending visits by the national nursing accrediting body and a representative of the board shall arrange a joint site visit with the national nursing accrediting body representative to evaluate on-site materials included in the program proposal. Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of program compliance with the standards established by the state and the national nursing accrediting body.

(8) Following the site visit, a report shall be prepared and shared with the designated head of the nursing unit for review and correction of factual data. The representatives' site visit report shall not be construed as affirming that the proposed program plan meets requirements.

(9) The governing institution shall be notified in writing of action taken by the board on the site visit report.

Section 3. Standards and Final Approval. (1) In order to receive final approval, a postsecondary education institution shall provide to the board evidence that it has met the accreditation standards for doctoral education of either:

(a) The National League for Nursing Accrediting Commission; or

(b) The Commission on Collegiate Nursing Education.

(2) This evidence shall be in the form of a copy of the letter of accreditation from either organization identified in subsection (1) of this section.

(3) A postsecondary education institution that has offered a DNP degree prior to the effective date of this administrative regulation may receive final approval from the board by submitting a copy of its letter of accreditation from either organization identified in subsection (1) of this section.

(4) Failure to maintain accreditation standards may result in withdrawal of approval by the board.

Section 4. Advanced Practice Registered Nurse Tracks. A postsecondary education institution that offers tracks within the DNP degree that lead to licensure as an advanced practice registered nurse (APRN) shall meet the standards in 201 KAR 20:062 in addition to the standards set forth in this administrative regulation.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and procedures for schools wishing to offer a DNP degree to obtain approval from the Board of Nursing.

(b) The necessity of this administrative regulation: The board is required by Senate Bill 127 (RS 2010) to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and procedures.

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

ing to offer the DNP degree must first obtain Board approval before obtaining approval from the Council for Postsecondary Education.

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

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

(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: Any college or university seeking to offer a DNP degree; 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 apply for board approval in order to offer a DNP degree.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are two fees: $250 for already accredited programs and $2,000 for programs that are initially seeking accreditation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: Unknown

(b) On a continuing basis: Unknown

(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 is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It references the two fees discussed above.

(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 314.131.

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? Unknown

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? There is no way to estimate the additional costs to administer this program since it is unknown how many schools will apply.

(d) How much will it cost to administer this program for subsequent years? Unknown

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

Revenues (+/-): The administrative regulation will bring in some revenue through the application fees.

Expenditures (+/-): Additional staff time, and the possibility of additional staff, will be needed since this is a new program for the board.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(New Administrative Regulation)

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.111, 314.131.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(3) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for Advanced Practice Registered Nurse (APRN) licensure and to monitor standards for APRN competency under KRS Chapter 314. This administrative regulation establishes APRN programs of nursing standards.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse program of nursing" means the educational unit that prepares a person for practice and licensure as an advanced practice registered nurse and includes secondary or distance learning sites, if applicable.

(2) "APRN program coordinator" means that individual who is responsible for the organization of the educational component and is licensed as an APRN in the designated role.

(3) "Designated nursing unit administrator" means that individual who has administrative authority for the nursing unit.

(4) "National nursing accrediting body" means National League for Nursing Accreditation Commission (NLNAC) or the Commission for Collegiate Nursing Education (CCNE).

Section 2. Requirements for Advanced Practice Registered Nursing Programs. (1) An educational institution that offers an advanced practice registered nursing program shall ensure that the program:

(a) Is offered by or affiliated with a college or university that is accredited under 201 KAR 20:260, Section 2(1);

(b) Is a formal educational program, that is part of a doctoral, masters program, or a post-masters program in nursing with a concentration in an advanced practice registered nursing and population foci as required for licensure in KRS 314.011;

(c) Has presented evidence that it has applied for nursing program accreditation and meets accreditation standards; and

(d) Offers a curriculum that covers the scope of practice for both the category of advanced practice registered nurse as specified in KRS 314.011 and the population foci.

(2) The clinical practice component of the curriculum shall be congruent with current national professional organizations and nursing accrediting body standards applicable to the APRN role and population focus;

(3) The program shall notify the board of any changes in hours of clinical practice or accreditation status and respond to board requests for information.

(4) The program shall have financial resources sufficient to support the educational goals of the program.

(5) The program shall establish academic and professional standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational guidelines and recognized standards of professional conduct.

(6) The program shall notify the board regarding any plans to expand the program to additional locations or increase the student

enrollment by more than fifty (50) percent from the previously admitted cohort.

(7) Voluntary closure of a program shall be in accordance with 201 KAR 20:360, Section 5.

Section 3. Currently Existing APRN Programs of Nursing. (1) APRN programs of nursing in existence as of July 15, 2010, shall seek approval from the board prior to July 15, 2011. The following materials shall be submitted along with the fee identified in 201 KAR 20:240:

(a) Details regarding each program presently enrolling students, to include: name of institution, address, contact information for designated head of the nursing unit, degree offered, designated clinical tracks;

(b) A copy of the most recent self-study submitted for the most recent accreditation/re-accreditation by a national nursing accrediting body; and

(c) Copies of all communication between the program and the national nursing accrediting body since the time of the site visit.

(2) The program shall meet all requirements established for curriculum, organizational structure, faculty and students as identified in this administrative regulation.

(3) Following submission of the materials, the application shall be placed on the next education committee agenda.

(4) The designated nursing unit administrator, along with the APRN program coordinator, shall be available during the discussion of the report at the education committee to provide clarification. The committee shall make a recommendation to the board.

(5) The decision to grant full approval by the board shall be based on review of the following:

(a) Achievement and continued approval by a national nursing accrediting body; and

(b) Adherence to all requirements of this administrative regulation.

(6) The approval period shall not exceed the approval period of the national nursing accrediting body.

(7) An educational institution that is denied approval of an advanced practice registered nursing program shall meet with representatives of the board to determine actions needed; following this meeting, the program may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order denying its application for approval.

Section 4. Establishing a New APRN Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing an APRN program of nursing.

(2) The governing institution that desires to establish and conduct an APRN program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 1.

(3) The governing institution shall submit an application to establish an APRN program of nursing along with the fee required by 201 KAR 20:240.

(4) At the time that the application is submitted to the board, the program shall also begin the application process with a national nursing accrediting body.

(5) The application shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students.

(6) The application shall be completed under the direction of the registered nurse who shall serve as the designated nursing unit administrator or the APRN program coordinator and who meets the qualifications of an APRN program coordinator as outlined in this administrative regulation.

(7) The program shall not advertise or enroll students until such time that the board has granted developmental approval status.

(8) The application shall include:

(a) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, institutional faculty qualifications, and resources that are sufficient to support defined outcomes and goals;

(b) Organizational chart of the governing institution and written plan which describes the organization of the program of nursing and its relationship to the institution;

(c) Designation of the current or desired national nursing accrediting body used in the development of the program;

(d) Description and rationale for the proposed type of APRN program to include the certificate or degree to be awarded and the population foci;

(e) Approval from the governing body of the institution proposing the APRN program of nursing or other empowered approval bodies as applicable;

(f) A copy of the curriculum vitae of the registered nurse identified as the APRN Program coordinator;

(g) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

(h) Evidence of support from the community of interest;

(i) A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

(j) Description of physical or virtual resources adequate to meet the needs of the faculty and students;

(k) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(l) Philosophy of the APRN program and program outcomes for graduates;

(m) Curriculum design for each identified track and population foci as defined in KRS 314.011 to include proposed course sequence, description of courses, credit hours delineating those credits assigned to theory and clinical;

(n) Availability of clinical experiences sufficient to accommodate the number of students to include total number of clinical hours designated for each track or population foci;

(o) A five (5) year plan for recruiting and retaining qualified nurse faculty; and

(p) Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(9) Developmental approval shall be the designation granted to an APRN program of nursing that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from a national nursing accrediting body. This designation will be for no more than a two (2) year period of time pending review and approval by a national nursing accrediting body.

(10) When developmental approval has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the APRN program of nursing to notify the board of the admission and graduation of the first class.

(11) Developmental approval of an APRN program shall expire eighteen (18) months from the date of approval if a class of students is not admitted.

(12) All formal communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board within thirty (30) days of receipt.

(13) The APRN program coordinator shall notify the board within five (5) business days of any change in accreditation status.

(14) The APRN program coordinator shall notify the board of pending visits by the national nursing accrediting body and a representative of the board shall arrange a joint site visit with the national nursing accrediting body representative to evaluate on-site materials included in the program proposal. Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of program compliance with the standards established by the state and the national nursing accrediting body.

(15) Following the site visit, a report shall be prepared and shared with the APRN program coordinator for review and correction of factual data. The representatives' site visit report shall not be construed as affirming that the proposed program plan meets requirements.

(16) The governing institution shall be notified in writing of action taken by the board on the site visit report.

(17) The decision to grant full approval by the board shall be based on review of the following:

(a) Achievement and continued full approval by a national

nursing accrediting body; and

(b) Site visit reports by the board representative conducted to evaluate program compliance with administrative regulations.

(18) The board may grant full approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 5. Administrative Structure of Program. (1) The designated nursing unit administrator shall hold the following qualifications:

(a) A current, active, unencumbered registered nurse license or privilege to practice in Kentucky;

(b) A doctoral degree earned from a university accredited by the United States Department of Education;

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience; and

(d) Current knowledge of APRN practice

(2) The qualifications for the APRN program coordinator shall include:

(a) A current, active, unencumbered APRN license or privilege to practice in Kentucky;

(b) A minimum of a masters degree in nursing from an accredited college or university; and

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience.

(3) The board shall be notified in writing of a vacancy or pending vacancy in the position of the APRN program coordinator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the APRN program coordinator vacates the position, the nursing unit administrator shall submit to the board in writing:

(a) The effective date of the vacancy;

(b) The name of the APRN who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae; and

(c) Status reports from the APRN program of nursing national nursing accrediting body.

(4) If there is to be a lapse between the date of the vacancy and the date the newly-appointed APRN program coordinator assumes duties, the designated nursing unit administrator or the head of the governing institution shall submit a plan of transition to insure the continuity of the program;

(5) Progress reports shall be submitted if requested by the board;

(6) The length of the appointment of an interim APRN program coordinator shall not exceed six (6) months.

(7) Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

(8) If the individual to be appointed as the interim APRN program coordinator is not qualified pursuant to the APRN program of nursing national nursing accrediting body's standards, the designated nursing unit administrator shall petition the board for a waiver prior to the appointment.

Section 6. Faculty, Adjuncts, and Clinical Preceptors. (1) The qualifications for nursing faculty within the program leading to licensure as an APRN shall be as follows:

(a) A current, active, unencumbered APRN license to practice in Kentucky;

(b) A minimum of a master's degree in nursing or health related field in the clinical specialty;

(c) Two (2) years of APRN clinical experience; and

(d) Current knowledge, competence and certification as an APRN in the role and population foci consistent with teaching responsibilities.

(2) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching as designated in subsection (1) of this section.

(3) Other qualified individuals may teach a non-clinical course or assist in teaching a clinical course in an advanced practice registered nursing program within their area of expertise.

(4) Clinical preceptors may be used to enhance faculty-directed clinical learning experiences. Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. Clinical preceptors shall be approved by faculty and meet the following requirements:

(a) Holds an unencumbered active license or multistate privilege to practice as a registered nurse and advanced practice registered nurse or a physician in the state in which the preceptor practices or, if employed by the federal government, holds an unencumbered active registered nurse and advanced practice registered nurse or physician license in the United States; and

(b) Has a minimum of one (1) year full time clinical experience in current practice as a physician or as an APRN within the role and population focus.

(5) A clinical preceptor shall function as a supervisor and teacher and evaluate the student's performance in the clinical setting. The program faculty shall retain ultimate responsibility for student learning and evaluation.

(6) The preceptor may be a practicing physician or other licensed, graduate-prepared health care provider with comparable practice focus though they cannot consist of a majority of the preceptors.

(7) A clinical preceptor who is an APRN shall hold:

(a) National certification in the advanced practice category in which the student is enrolled; or

(b) Current board licensure in the advanced practice category in which the student is enrolled.

(8) If a preceptor cannot be found who meets the requirements, educational and experiential qualifications as determined by the nursing program, the Board of Nursing shall be notified and a waiver requested.

(9) A complete list of faculty members, clinical faculty, adjuncts, and preceptor appointments shall be reported to the board in writing annually.

Section 7. Curriculum. (1) An education program offered by an accredited college or university that offers a graduate degree or post-masters certificate with a concentration in the APRN role and at least one population foci shall include the following components:

(a) Clinical supervision congruent with current national professional organizations and the national nursing accrediting body standards applicable to the APRN role and population focus;

(b) Curriculum that is congruent with national standards for graduate level and APRN education, is consistent with nationally recognized APRN roles and population foci, and includes, but is not limited to graduate APRN program core courses;

(c) Preparation in the core competencies for the identified APRN role;

(d) Coursework focusing on the APRN role and population foci. The curriculum shall be consistent with competencies of the specific areas of practice.

(3) APRN programs preparing for two (2) population foci or combined nurse practitioner/clinical nurse specialist shall include content and clinical experience in both functional roles and population foci.

(4) Each instructional track shall have a minimum of 500 supervised clinical hours directly related to the role and population foci, including pharmacotherapeutic management of patients.

(5) The curriculum shall contain the following three (3) separate graduate level courses in addition to APRN core courses:

(a) Advanced physiology/pathophysiology, including general principles that apply across the lifespan;

(b) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(c) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents.

(6) Content specific to the role and population focus in the APRN core area shall be integrated throughout the other role and

population didactic and clinical courses.

(7) The curriculum shall include:

(a) diagnosis and management of diseases across practice settings including diseases representative of all systems and caused by major morbidities;

(b) preparation that provides a basic understanding of the principles for decision making in the identified role; and

(c) role preparation in one of the six population foci of practice identified in 201 KAR 20:056.

(8) Preparation in a specialty area of practice is optional, but if included, must build on the APRN role/population-focus competencies. Clinical and didactic coursework must be comprehensive and sufficient to prepare the graduate to practice in the APRN role and population focus.

Section 8. Students. (1) A student entering into the APRN program shall have an active, unencumbered registered nurse license.

(2) A student who wishes to complete a clinical experience in this state but is enrolled in an out of state APRN program pursuant to Section 11 of this administrative regulation shall have an active, unencumbered RN license in another jurisdiction, either in the U.S. or in another country; as long as the following criteria are met:

(a) The APRN program of nursing is accredited by a national nursing accrediting body;

(b) The graduate program advises the student of expectations regarding student practice and required supervision;

(c) The graduate program provides direct supervision of the clinical experience and informs faculty, preceptors and clinical facilities that the student is practicing under this limited exemption; and

(d) The student limits practice to what is required for completion of the graduate program requirements.

Section 9. Ongoing Approval. (1) Approved APRN programs of nursing accredited by a national nursing accrediting body shall be subject to a site visit at intervals associated with their national nursing accreditation.

(2) The board requires continuous accreditation by a national nursing accrediting body.

(3) A joint site visit date shall be established in collaboration with the APRN program of nursing and representatives of the respective national nursing accrediting body. A specific list of information required for review shall be sent to the program at the time that the site visit date is established.

(4) Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of compliance with the standards set forth by the APRN program of nursing national nursing accrediting body.

(5) Factors that may indicate the need for a focused site visit and jeopardize program approval status:

(a) Reported deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives/outcomes, or policies;

(c) Continual failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 4 of this administrative regulation.

(g) Withdrawal of accreditation for either the college/university or the national nursing accrediting body; or if accredited for less than the maximum accreditation period, the program may require additional reports regarding noncompliance;

(h) Failure to obtain approval of a change that requires approval prior to implementation;

(i) Providing false or misleading information to students or the public concerning the program of nursing;

(j) A change in or the inability to secure or retain a qualified APRN program coordinator or faculty as required by their national nursing accrediting body.

(k) Evidence of a high student or faculty attrition rate as compared to the state average;

(l) A change in the ownership or organizational restructuring of the governing institution; or

(m) As deemed necessary by the board or the APRN program of national nursing accrediting body to determine compliance with referenced standards.

(6) If the APRN program of nursing achieves reaccreditation and the board determines that all requirements have been met, the program will be eligible for continuing full approval.

(7) The board shall have the authority to visit a program of nursing on an announced or unannounced basis.

(8) Board action following site visit:

(a) The board shall evaluate a program of nursing in terms of its compliance with this administrative regulation at the same time as the national nursing accrediting body.

(b) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the APRN program coordinator for review and correction of factual data.

(c) The APRN program administration shall be available during the discussion of the report at the board committee to provide clarification.

(d) Following the board's review and decision, a letter shall be sent to the APRN program coordinator and the head of the governing institution regarding the approval status of the program of nursing and any requirements to be met along with required timelines.

(e) A program has the right at any time to present evidence to the board that the deficiency(ies) has been corrected and may petition the board to restore full approval.

Section 10. Approval Status and Withdrawal of Approval. (1) The board shall approve an APRN program of nursing if approval is in the best interest of the public and the program meets the requirements of this administrative regulation. The board may grant developmental approval for a period of two (2) years or less to an APRN program of nursing.

(2) Full approval may be granted for the same period of time that is designated by the national nursing accrediting body.

(3) The APRN program coordinator of a nursing program that has its continuing approval-status rescinded by the board shall meet with representatives of the board to determine actions needed; following this meeting, the program may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order rescinding continuing full-approval status.

(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards have not been met.

(a) Following the decision of the board to place a program of nursing on conditional status, the program coordinator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of deficiencies being sent, file a plan to correct each of the deficiencies.

(c) The APRN program coordinator may, within thirty (30) days of the notice of the
deficiencies, request to appear before the board to contest the board's determination
of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies being sent are upheld after a request to contest them, the board may conduct
periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(e) If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probational.

(5) Probational approval shall be the designation granted to a program of nursing if one or more standards have continued to be unmet.

(a) Following the decision of the board to place a program of

nursing on probational status, the program coordinator shall be notified of the continued areas of deficiency. A new student shall not be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one academic year.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.

(c) The APRN program coordinator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(6) If the program of nursing has not corrected the deficiencies within one (1) academic year of being placed on probational status, a hearing pursuant to KRS Chapter 13B shall be conducted to determine whether to withdraw approval of the program of nursing.

(7) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:

(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or

(b) Assist a currently enrolled student to transfer to an approved program of nursing.

(8) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection 9 of this section shall be continuously monitored by the board until the program closes.

(9) The Board may return an APRN program to full approval status if the program attains and maintains adherence to this administrative regulation.

Section 11. Out-of-state APRN Programs Seeking Clinical Placements in Kentucky. (1) A nursing program, located in another state or territory of the United States that wishes to provide clinical experiences in Kentucky shall seek permission from the Kentucky Council of Postsecondary education before enrolling, offering or conducting such sessions for citizens of the Commonwealth.

(2) For out-of-state nursing programs, the program shall be currently accredited in good standing with a national nursing accrediting body,

(3) An applicant who is denied approval to conduct clinical instruction in Kentucky may request a meeting with board representatives or request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order.

(4) The board may rescind approval held by an out-of-state nursing program to
conduct clinical instruction in Kentucky based on factors identified in Section 9 of this administrative regulation.

(5) Programs seeking individual clinical placements of students shall submit the following at least three (3) months prior to beginning of the experience:

(a) Designated university with relevant nursing accreditation status;

(b) Student name;

(c) The clinical practice setting;

(d) The credentials of the coordinating faculty member at the out-of-state institution;

(e) Credentials of the clinical preceptor, consistent with the qualifications outlined in this administrative regulation;

(f) Evidence of the student's qualifications for participation consistent with criteria outlined in Section 8 of this administrative regulation; and.

(g) Evidence of agreement the health care facility hosting the clinical experience.

JIMMY ISENBERG, President

APPROVED BY AGENCY: June 17, 2010

FILED WITH LRC: July 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2010 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2010, 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 close of business August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and procedures for schools to obtain approval from the Board of Nursing for APRN educational programs.

(b) The necessity of this administrative regulation: The board is required by House Bill 179 (RS 2010) to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Schools seeking to offer APRN programs of nursing are required to obtain Board approval for these programs.

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

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

(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: Any college or university seeking to offer an APRN program of nursing; 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 apply for board approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are two fees: $250 for already existing programs and $2,000 for programs that are beginning new programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: Unknown

(b) On a continuing basis: Unknown

(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: Unknown

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It references the two fees discussed above.

(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 314.131.

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? Unknown

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? There is no way to estimate the additional costs to administer this program since it is unknown how many schools will apply.

(d) How much will it cost to administer this program for subsequent years? Unknown

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

Revenues (+/-): The administrative regulation will bring in some revenue through the application fees.

Expenditures (+/-): Additional staff time, and the possibility of additional staff, will be needed since this is a new program for the board.

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian
Division of Animal Health
(New Administrative Regulation)

302 KAR 21:005. Animal diseases to be reported.

RELATES TO: KRS 257.020, 257.030, 257.080

STATUTORY AUTHORITY: KRS 257.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 requires the Kentucky Department of Agriculture to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and set out the conditions under which the diseases shall be reported. This administrative regulation sets forth a comprehensive list of reportable diseases and the conditions under which the diseases shall be reported.

Section 1. Duty To Notify. Every veterinarian, veterinary practice and personnel; veterinary diagnostic laboratory and personnel; laboratory providing animal diagnostic services for Kentucky; owner of animals; persons associated with any equine, livestock, poultry, or fish; sales or event establishment and personnel; transportation provider; slaughter facility and personnel; or any other person having knowledge of the existence of any reportable disease, as provided in Section (2) of this administrative regulation, shall immediately report said disease or condition to the State Veterinarian. All laboratories providing diagnostic services for Kentucky equine, livestock, poultry, or fish shall give notification pursuant to Section 3 of this administrative regulation.

Section 2. Diseases That Must Be Reported. (1) The following diseases and conditions must be immediately reported to the State Veterinarian:

(a) United States Animal Health Association Foreign Animal Diseases,

(b) The World Organization for Animal Health (OIE) Listed Diseases,

(c) Botulism,

(d) Burkholderia pseudomallei,

(e) Caseous lymphadenitis,

(f) Chronic Wasting Disease,

(g) Clostridium perfringens epsilon toxin,

(h) Coccidiodes immitis,

(i) Menangle virus,

(j) Plague (Yersinia pestis),

(k) Plant and chemical toxicosis,

(l) Scabies,

(m) Shigatoxin,

(n) Staphylococcal enterotoxins,

(o) Strangles (Streptococcus equi equi), and

(p) Swine influenza virus

(2) Conditions of unknown etiology that meet any of the following criteria must be reported immediately:

(a) Abortion storms in livestock/equine of unknown etiology,

(b) Undiagnosed central nervous system conditions,

(c) Unusual number of acute deaths in livestock/equine, poultry, fish, or

(d) Highly infectious conditions of any etiology, known or unknown.

Section 3. (1) The notification shall be given to the Office of the State Veterinarian, Kentucky Department of Agriculture, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601; telephone (502) 564-3956; fax (502) 564-7852.

(2) The person reporting shall furnish the:

(a) Name, address, and telephone number of the owner of the equine, livestock, poultry, or fish.

(b) Animal species, breed, age, sex, how many affected, and clinical signs;

(c) Premises address for the animal(s) tested or affected;

(d) Name, address, and telephone number of veterinarian submitting the case; and

(e) Name and address and phone of person reporting.

(3) A report submitted to the State Veterinarian by a diagnostic laboratory of a condition suspected or diagnosed by a test result or other laboratory procedure from the laboratory shall constitute notification on behalf of the laboratory and the submitting veterinarian or owner.

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

(a) USAHA Seventh Edition of Foreign Animal Diseases, Revised 2008. This publication may also be found at http://www.usaha.org/pubs/#FAD.

(b) The World Organisation for Animal Health (OIE) Listed Diseases. This list may also be found at http://www.oie.int/eng/maladies/en_classification2010.htm?e1d7.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 30, 2010

FILED WITH LRC: July 2, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

August 23, 2010, at 10 a.m., at Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the list for all reportable diseases and how to contact the State Veterinarian.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.080.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by promulgating who must report diseases, which diseases must be reported, and the conditions under which the diseases shall be reported.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the reporting requirements for diseases of livestock, poultry, and fish in the state.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to the administrative regulation: This is a new administrative regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How will this amendment 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: Kentucky Department of Agriculture and veterinarian, veterinary practice personnel; veterinary diagnostic laboratory personnel; laboratory providing animal diagnostic services for Kentucky; owner of animals, persons associated with any equine, livestock, poultry, or fish, sales or event establishment owners or employees; transportation provider; slaughter facility; auctioneer or any other person having knowledge of the existence of any reportable disease.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will be required to report a reportable disease which they discover or notice a reportable disease.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will not incur costs other than the time needed to call or fax the reportable disease to the State Veterinarian.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance to Kentucky Agriculture are immeasurable. Should a quarantine be avoided due to quick disease response the value of animals would be maintained.

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

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (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 Agriculture

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.080

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 by this regulation.

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

(c) How much will it cost to administer this program for the first year? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Department of Agriculture will have no new additional expenditures due to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(New Administrative Regulation)

307 KAR 1:060. Kentucky Small Business Investment Credit Program.

RELATES TO: KRS 154.20-33, 154.60-010-154.60-030.

STATUTORY AUTHORITY: KRS 154.20-33, 154.60-030.

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.60-030 authorizes the Kentucky Economic Development Finance Authority to establish the procedures and standards for the Kentucky Small Business Investment Credit Program set forth in KRS 154.60-010 et. seq. by the promulgation of administrative regulations. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation adopts the application for the KRS 154.60 economic development incentives program and sets the fee structure.

Section 1. Definitions. (1) "Application" means the form "Kentucky Small Business Investment Credit (KSBIC) Application", dated June 30, 2010.

(2) "Base employment" is defined by KRS 154.60-010(2).

(3) "Base hourly wage" means the average per hour wage earned by a full-time employee, including wages, tips and commissions, but excluding benefits, reimbursements, and bonuses.

(4) "Base year" is defined by KRS 154.60-010(3).

(5) "Creates and fills" is defined by KRS 154.60-010(4).

(6) "Company start date" means the first day the business applicant begins its operations as verified by one of the methods set out in Section 3(2) of this administrative regulation.

(7) "Eligible position" is defined by KRS 154.60-010(5).

(8) "Eligibility date" means the date the business applicant becomes eligible to apply for the tax credits which is the date:

(a) One (1) year after the purchase of qualifying equipment or technology; or

(b) One (1) year after the eligible position or positions have been created and filled, which ever date occurs last.

(9) "Full-time employee" is defined by KRS 154.60-010(6).

(10) "KEDFA" means the Kentucky Economic Development Finance Authority.

(11) "Qualifying equipment or technology" means tangible property:

(a) With a per-unit cost of $300 or more;

(b) With an expected useful life of more than one (1) year; and

(c) Approved by the Division of Small Business Services.

Qualifying equipment or technology shall not include real property, buildings, and supplies.

(12) "Small business" is defined in KRS 154.60-010.

Section 2. Ineligible Business Applicants. (1) The following businesses shall be ineligible to apply:

(a) Businesses engaged in any type of illegal activity;

(b) Businesses that present live performances of a prurient sexual nature or derive more than (5) percent of annual gross revenue through the sale or rental of products or services of a prurient sexual nature, or the presentation of any depictions or displays, of a prurient sexual nature;

(c) Businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(d) Businesses deriving more than fifty (50) of annual gross revenues from lobbying activities;

(e) Businesses that are in default on any federal, state, or local taxes; are not in good standing with the Kentucky Secretary of State's Office (if applicable); or do not hold all current licenses, permits, and registrations necessary to legally operate a business in Kentucky; or

(2) Businesses that have received Kentucky Economic Development Finance Authority approved loans, grants, or tax incentives that were based on job creation or equipment purchases if the eligible position(s) or qualifying equipment in their applications was used as the basis for a tax credit under a previously approved Kentucky Economic Development Finance Authority incentive program.

Section 3. Application Supplements. In addition to the information required by KRS 154.60-020, the applicant shall provide:

(1) All information required by the application which is incorporated herein by reference;

(2) Verification of its company start date by providing one (1) of the following:

(a) If the business is registered with the Kentucky Secretary of State, the organization number and organization date as listed in the Secretary of State's Organization Search database at http://sos.ky.gov/online.htm; or

(b) The initial occupational license issued to a business that clearly identifies the company start date; or

(c) Documentation from the Kentucky Department of Revenue that shows the company start date; or

(d) Affidavit from the business attesting to the company start date including the factual basis for citing the date; and

(3) The applicant shall pay an administration fee, which is one (1) of the qualifying tax credit amount in order to be eligible for the credits set forth in KRS 154.60-020. The fee is refundable if not approved by the Kentucky Economic Development Finance Authority.

(4) In addition to the administration fee, the applicant shall certify its current level of employment prior to approval by the Kentucky Economic Development Finance Authority.

Section 4. Incorporation by Reference. (1) The "Kentucky Small Business Investment Credit (KSBIC) Application", June 30, 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN HALE, Chairman
LARRY M. HAYES, Secretary

APPROVED BY AGENCY: July 7, 2010

FILED WITH LRC: July 14, 2010 at noon

PUBLIC HEARING: A public hearing of this administrative regulation shall be held on August 24, 2010, at 10 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capital Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Janine Coy-Geeslin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides an application for the economic development tax incentive created by KRS 154.60 et. seq. as required by KRS 154.60-030.

(b) The necessity of this administrative regulation: This regulation will provide a means to apply for the economic development incentives created by KRS 154.60 et. seq.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.60-030 directs the Kentucky Economic Development Finance Authority (KEDFA) to promulgate a regulation for this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by statute and sets forth the application process.

(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: New or existing small businesses with fewer than 50 employees seeking tax incentives to support business growth.

The number of businesses cannot be estimated.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation sets forth the application form and fee and sets forth supplemental information that may be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to qualify for submission to the authority for consideration of approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an administration fee which is 1% of the qualifying tax credit amount. Payment is not required unless the application is approved and selected for submission to KEDFA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the applicant project is approved, the incentive amount approved will vary depending on the investment in qualifying equipment or technology and the number of jobs created in the Commonwealth.

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

(a) Initially: The Cabinet for Economic Development has developed forms and processes and will be training existing personnel to administer the new program generally. At this time the implementation alone requires significant personnel time, but no cash expense. Applications will not be accepted until January 1, 2011, pursuant KRS 154.60-020 and 141.384.

(b) On a continuing basis: There will be administrative cost related to processing of the application.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration fee will provide financial support.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. Please see (4)(b).

(9) TIERING: Is tiering applied? Tiering is not used as the application process and the administration fee apply to all entities.

FISCAL NOTE ON STATE OF 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 department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 154.60 and 154.20-33.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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? Unknown

(b) How much revenue will this administrative regulation generate for the state of local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? Cost will depend on the number of applications and complexity of projects submitted.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the number of applications and complexity of projects submitted.

TRANSPORTATION CABINET
Kentucky Bicycle and Bikeway Commission
Office of the Secretary
(New Administrative Regulation)

601 KAR 14:030. Bicycle and bikeway program.

RELATES TO: KRS 61.820, 61.826, 174.120; 174.125

STATUTORY AUTHORITY: KRS 174.120, 174.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.120 requires the Transportation Cabinet to develop and coordinate a bikeway program in assistance and cooperation with local governments and other agencies. KRS 174.125 establishes the Kentucky Bicycle and Bikeway Commission (KBBC) within the Transportation Cabinet to serve as an advisor to the secretary in matters related to the interests of the bikeway program and the bicycling public. This administrative regulation implements the procedures related to KRS 174.120 and 174.125.

Section 1. Quarterly Meetings. (1)(a) KBBC shall conduct at least four (4) quarterly meetings each year at a time and place agreed upon by the chairman and the commission members. Meetings shall be conducted as established in KRS 61.820 and 61.826.

(b) The secretary shall call at least one (1) yearly meeting with KBBC in order to review issues related to the bikeway program.

(c) A schedule of the quarterly meetings including the time and place of meetings for the coming year shall be set by the commission pursuant to paragraph (a) of this subsection at its last meeting of the calendar year and forwarded to the secretary of the Transportation Cabinet.

(d) The schedule for meetings may be altered upon motion approval by a quorum of the commission. The altered meeting schedule shall be forwarded to the secretary.

(e) Notice of regular quarterly meetings of the commission shall be given to each member of the commission and the secretary of the Transportation Cabinet in writing by either regular or electronic mail not less than seven (7) days prior to the meeting. The notice shall contain a date, time, place and agenda for the meeting.

(f) Minutes of all meetings shall be kept by the commission, and a copy of the minutes shall be forwarded to the secretary within ten (10) days of the meeting.

Section 2. Special Meetings. (1) A special meeting may be called as designated by the commission or the secretary and shall require three (3) days notice to all parties.

Section 3. Grant Applications. (1)(a) Completed grant applications for the Paula Nye Memorial Educational Grant for funds received from sales of the "Share the Road" license plate shall be reviewed by the commission.

(b) A copy of the selected grant applications and a memorandum supporting the commission's decision in selecting the applications shall be sent to the secretary within thirty (30) days of the closing date of receipt for all applications.

(c) The secretary shall approve or deny the commission's decision within thirty (30) days of his or her receipt of the applications and the memorandum.

(d) The secretary's failure to approve or deny the commission's decision within thirty (30) days of receipt of the applications and memorandum shall be deemed the same as approval.

Section 4. Audit of Funds. (1) Funds obtained by the commission through monetary donations for purchase of the "Share the Road" license plate shall be subject to an audit as established in KRS 186.164 and 601 KAR 9:130.

(2) A copy of the findings of the audit shall be forwarded to the Secretary of Transportation.

(3) The audit shall be reviewed and approved by the Office of Audits within the Transportation Cabinet.

MIKE HANCOCK, Acting Secretary
REBECCA GOODMAN, Executive Director
APPROVED BY AGENCY: July 14, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo (502) 564-7650

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the meeting procedures between the Kentucky Bicycle and Bikeway Commission and the Secretary of the Transportation Cabinet. This administrative regulation also sets up parameters for the grant applications received by KBBC for the Paula Nye Memorial Educational Grant.

(b) The necessity of this administrative regulation: KRS 174.125 requires the Secretary of the Transportation Cabinet to adopt administrative regulations to implement the purposes of KRS 174.120 and 174.125.

(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation sets up meeting procedures so that the Secretary of the Transportation Cabinet may be informed by the commission on bicycle and bikeway issues.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will insure that the secretary is fully informed by the commission about bicycle and bikeway issues. The secretary can report those findings to the legislature on a yearly basis.

(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:

(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: Only the Secretary of Transportation and the Kentucky Bicycle and Bikeway Commission are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KBBC will have guidelines to follow in order to set up their quarterly meetings.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): The parties will benefit by having set guidelines for when and how their meetings are to occur. Having the set guidelines and knowing when and where meetings are to occur will insure that the secretary is kept informed of bicycle issues.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established either directly or indirectly.

(9) TIERING: Is tiering applied? No tiering is applied. This is a regulation that establishes meeting procedures and establishes how the grant applications for the Paula Nye Memorial Educational grant will be reviewed and audited.

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 Bicycle and Bikeways Commission and the Secretary of the Transportation Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 601 KAR 14:030

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. Expenditures and revenues should not be affected.

(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 costs are anticipated.

(d) How much will it cost to administer this program for subsequent years? No costs are anticipated.

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Repealer)

806 KAR 9:121. Repeal of 806 KAR 9:120, 9:130, 9:250, 9:280.

RELATES TO: KRS 304.9-030, 304.9-130, 304.9-210, 304.9-430, 365.015, 304.9-485

STATUTORY AUTHORITY: KRS 13A.310, KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 9:120, Unlicensed adjusters, which is no longer required because the subject matter of these regulations has been incorporated into statute with the enactment of 2010 GA HB 233; 806 KAR 9:130, Agent's assumed business name, which is no longer required because the statutory provisions requiring a certificate of an assumed name prior to licensure by the department have been repealed; and 806 KAR 9:250, Specialty credit insurance producer, and managing employee; and 806 KAR 9:280, Business entity election, which are no longer required because the related statute regarding specialty credit insurance producers has been repealed with the enactment of 2010 GA HB 233.

Section 1. The following administrative regulations are hereby repealed:

(1) 806 KAR 9:120, Unlicensed adjusters;

(2) 806 KAR 9:130, Agent's assumed business name;

(3) 806 KAR 9:250, Specialty credit insurance producer and managing employee; and

(4) 806 KAR 9:280, Business entity election.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department 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 repeals 806 KAR 9:120, 9:130, 9:250, and 9:280.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal regulations which have become obsolete with the enactment of 2010 GA HB 233.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate regulations to aid in the effectuation of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. These administrative regulations are no longer necessary because the related statutes have been repealed, the statutory provisions they were promulgated to clarify have been repealed or their contents have been incorporated into statute. Therefore, the department wishes to repeal these administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove four administrative regulations that have become obsolete and are no longer needed.

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

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

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As this administrative regulation is repealing four obsolete regulations there will not be entities impacted by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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 be necessary by regulated entities as the result of the repeal of these administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As this administrative regulation is repealing four obsolete regulations, no action will be necessary by regulated entities to comply.

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

(a) Initially: There will not be an initial cost to implement this regulation.

(b) On a continuing basis: There will not be a continuing cost to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: As this administrative regulation is repealing four obsolete regulations, there will be no implementation or enforcement associated with this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all licensees.

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 Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

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, 13A.310.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue for the Department of Insurance for the first year.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(New Administrative Regulation)

806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings.

RELATES TO: KRS 304.1-050, 304.13-011, 304.13-051, 304.14-120, 304.48-020(7), 304.48-180

STATUTORY AUTHORITY: KRS 304.48-180, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations not inconsistent with KRS 304 Subtitle 48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner. This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Liability self-insurance group" is defined by KRS 304.48-020(7).

(3) "Rates and underwriting guidelines" means any rating manuals and underwriting rules for all coverage types including any manual or plan of rates, loss costs, risk classifications, rating schedule, minimum premium, policy fees, premium payment plans, rating rules, supplementary rating information or any other similar information needed to determine the applicable coverage rate or premium for a member.

(4) "Supplementary rating information" is defined by KRS 304.13-011(2).

Section 2. General Filing Requirements. (1) All filings shall be accompanied by a completed and signed Form LSIG F-1A P&C, Face Sheet and Verification Form for Liability Self-Insurance Groups.

(2) All paper filings shall include one (1) full document set on 8 1/2 in. x 11 in. white paper with two (2) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates and underwriting guidelines shall be filed separately from evidence of coverage forms.

(4)(a) A liability self-insurance group may submit a filing in an electronic format established by the National Association of Insurance Commissioners.

(b) An electronic filing shall be in lieu of a paper filing.

(5) The period of time in which the commissioner may affirmatively approve or disapprove the filing, as set forth in KRS 304.13-051, shall not begin until a complete filing and the filing fee in accordance with KRS 304.48-180, is received.

Section 3. Rate and Rule Filings. (1) The rates and underwriting guidelines shall be filed not later than fifteen (15) days after the date of first use of the rates and underwriting guidelines, pursuant to KRS 304.13-051(1).

(a) A liability self-insurance group shall not place into effect any rates, manuals, or underwriting rules which it proposes to use pursuant to KRS 304.13-051(1) or (4) if the rates, manuals or underwriting rules will result in an increase or decrease of more than twenty-five (25) percent from the group's then existing rates for any type of coverage for any classification of risks in any of its rating territories within a twelve (12) month period of time.

(b) Any group which proposes to change its then existing rates, manual or underwriting rules so as to effectively increase or decrease the rates of any coverage for any classification of risks within any rating territory more than twenty-five (25) percent within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the commissioner.

(3) Form LSIG: S-1 P & C, Filing Synopsis for Rates and or Rules, shall be filed with all rate and underwriting guideline filings. Separate forms shall be filed for each type of coverage.

(4) (a) Form LSIG: LC-1 P & C, Calculation of Loss Cost Multiplier, shall be filed with all rate filings referencing loss costs formulated by any advisory organization. Separate forms shall be filed for each type of coverage.

(b) Form LSIG LC-2 P & C, Expense Constant Supplement, shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used. Separate forms shall be filed for each type of coverage.

(5)(a) All rate or underwriting guideline filings utilizing an experience modification plan shall include the experience rating plan by type of coverage with the formula used for calculating the experience modification factor for that coverage. Each experience modification factor applied shall be made available to the member upon request.

(b) All rate or underwriting guideline filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(c) Any application of the schedule rating plan shall be based on evidence contained in the liability self-insurance group's file at the time it is applied. The schedule rating plan debit or credit factor applied shall be made available to the member upon request.

(d) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the liability self-insurance group, the debit may be removed at the time evidence of the correction is received by the group.

Section 4. Coverage Form Filings. (1) Form LSIG: S-2 P & C, Filing Synopsis for Forms, and Form LSIG: F-2 P & C, Forms Index, shall be filed with all evidence of coverage form filings.

(2) An evidence of coverage form shall not be used until it has been approved by the commissioner. If the rates pertaining to an evidence of coverage form are required to be filed with or approved by the commissioner pursuant to KRS 304.13-051, the coverage form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements an evidence of coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on an evidence of coverage form shall not, because of this change alone, require a new filing.

Section 5. Advisory Organization Filings. (1) A liability self-insurance group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent or forms provider may adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent by doing so in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a liability self-insurance group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider 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. Loss cost filings shall be specifically adopted.

(3)(a) If a liability self-insurance group chooses to adopt all of the current and future evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or forms provider, it may file written notice with the commissioner that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and

statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to not adopt certain evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner and shall pay the appropriate filing fee in accordance with KRS 304.48-180.

1. If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner, requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent or forms provider.

5. If a liability self-insurance group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent or forms provider, the insurer shall submit a filing to the commissioner indicating it is nonadopting.

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

(a) Form LSIG: F-1A P & C, "Face Sheet and Verification Form for Liability Self Insurance Groups", 7/2010;

(b) Form LSIG: F-2 P & C, "Forms Index", 7/2010;

(c) Form LSIG: S-1 P & C, "Filing Synopsis for Rates and or Rules", 7/2010;

(d) Form LSIG: S-2 P & C, "Filing Synopsis Form", 7/2010;

(e) Form LSIG: LC-2 P & C, "Expense Constant Supplement", 7/2010; and

(f) Form LSIG: EMA P & C, "E-mod Affidavit", 7/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the 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 of Insurance Internet Web site, http://insurance.ky.gov.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY:

FILED WITH LRC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2010, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the required forms to be used by liability self-insurance groups for rate, underwriting guidelines and evidence of coverage form filings, and describes the process for submitting those filings.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of 2010 GA SB 77, which requires liability self-insurance groups to file rates, underwriting guidelines and evidence of coverage filings in accordance with KRS 304.13-051 and 304.14-120.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations not inconsistent with KRS 304.48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner. This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to insure that complete, comparable information is filed for review and analysis by the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the five (5) liability self-insurance groups currently authorized to do business in Kentucky and an unknown number of future liability self-insurance groups that may apply to do business 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: Liability self-insurance groups will need to comply with the filing requirements outlined in this administrative regulation in order to be in compliance with KRS 304.48-180.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Liability self-insurance groups have previously filed forms with the department. This administrative regulation provides clear guidelines for the submission of their filings. Therefore, the cost to comply with this administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, liability self-insurance groups will be in compliance with KRS 304.48-180 and will have evidences of coverage, rates and underwriting rules appropriately reviewed by the Department of Insurance.

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

(a) Initially: There will be no cost to implement this regulation.

(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: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administra-

tive 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 liability self-insurance groups.

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 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 304.48-180, 304.48-230

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 Public Health
Division of Adult and Child Health Improvement
(Repealer)

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170.

RELATES TO: 20 U.S.C. 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676

34 CFR 303.23(2)(i), 303.148(2)(i), 303.403, 344(e), 344(h).

NECESSITY, FUNCTION AND CONFORMITY: The Cabinet for Health and Family Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of primary service coordination and assistive technology under First Steps, Kentucky's Early Intervention Program. This administrative regulation repeals 902 KAR 30:140, which is no longer needed because the provisions for primary service coordination shall be incorporated into 902 KAR 30:110, and the provisions for assistive technology shall be incorporated into 902 KAR 30:130. It also repeals 902 KAR 30:170, which has been incorporated into 902 KAR 30:180.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 30:140, Primary service coordination and assistive technology; and

(2) 902 KAR 30:170, Notice of action and administrative appeal.

WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner Date
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 30:140 and 30:170.

(b) The necessity of this administrative regulation: The change in the program structure necessitates the repeal of these regulations.

(c) How this administrative regulation conforms to the content of the authorizing statute: The provisions of these regulations have been incorporated into more appropriate administrative regulations.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The provisions of these regulations have been incorporated into more appropriate administrative regulations.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include: The Cabinet for Health and Family Services (one state agency) and 15 points of entry/local lead agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This is a repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): There are no new costs to related to repealing these administrative regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): This is a repealer.

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

(a) Initially: This is a repealer.

(b) On a continuing basis: This is a repealer.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: This is a repealer.

(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 is a repealer.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees? This is a repealer.

(9) TIERING: Is tiering applied? This is a repealer.

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? The repeal of these administrative regulations impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676.

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 is a repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is a repealer.

(c) How much will it cost to administer this program for the first year? This is a repealer.

(d) How much will it cost to administer this program for subsequent years? This is a repealer.

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: Changes to this administrative regulation will reduce expenditures by an estimated $10,000 per year.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Integrity
(New Administrative Regulation)

907 KAR 5:005. Health insurance premium payment (HIPP) program.

RELATES TO: 42 U.S.C. 1396e(a)-(e)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 42 U.S.C. 1396e(a)-(e).

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 the department's health insurance premium payment, or HIPP, program provisions as authorized by 42 U.S.C. 1396e(a) through (e). The HIPP program is designed to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees if cost effective, if the department determines that HIPP program participation would be cost effective for the department.

Section 1. Definitions. (1) "Buying in" means purchasing benefits from Medicare on behalf of an individual.

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

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Group health insurance plan" means any plan:

(a) Of, or contributed to by, an employer – including a self-insured plan - to provide health care directly or otherwise to the employer's employees, former employees, or the families of the employees or former employees; and

(b) Which:

1. Meets criteria established in Section 5000(b)(1) of the Internal Revenue Code of 1986, as amended, and

2. Includes continuation coverage pursuant to:

a. Title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986*;* or

b. Title VI of the Employee Retirement Income Security Act of 1974, as amended.

(5)"'Health insurance premium payment program participant" or "HIPP program participant" means an individual receiving health insurance benefits in accordance with this administrative regulation.

(6) "Income" means:

(a) Wages, salary, or compensation for labor or services;

(b) Money received from a statutory benefit including Social Security, Veteran's Administration pension, black lung benefit, or railroad retirement benefit; or

(c) Money received from any pension plan, rental property, or an investment including interest or dividends.

(7) "Income deduction" means a deduction from an individual's income for the
purpose of obtaining or trying to obtain Medicaid eligibility.

(8) "Medicaid" means the Kentucky Medicaid program.

(9) "Medicaid enrollee" means an individual eligible for and participating in Medicaid pursuant to 907 KAR 1:011, 907 KAR 1:605, 907 KAR 1:640, and 907 KAR 1:645.

(10) "Spend-down program" means a program by which an individual becomes eligible for Medicaid benefits:

(a) By spending down income in excess of the Medicaid income threshold; and

(b) In accordance with 907 KAR 1:640.

(11) "State plan" is defined in 42 C.F.R. 430.10

(12) "Wrap-around coverage" means coverage of a benefit not covered by an individual's group health insurance plan.

Section 2. HIPP Program Eligibility and Enrollment. (1) A Medicaid enrollee, or a person acting on the Medicaid enrollee's behalf, shall cooperate in providing information to the department necessary for the department to establish availability and cost effectiveness of a group health insurance plan by:

(a) Completing the Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41; and

(b) Submitting the Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41 to the individual's local Department for Community Based Services office.

(2) If a Medicaid enrollee HIPP program applicant, participant, parent, guardian, or caretaker fails to provide information to the department, within ten (10) days of the department's request, necessary to determine availability and cost effectiveness of a group health insurance plan, the department shall not enroll the applicant in the HIPP program unless good cause for failure to cooperate is

demonstrated to the department within thirty (30) days of the department's denial.

(3) Good cause for failure to cooperate shall be limited to the following circumstances:

(a) A serious illness or death of the applicant, participant, parent, guardian, or caretaker or of a member of the applicant's, participant's, parent's, guardian's, or caretaker's family occurred;

(b) A family emergency or household disaster – for example a fire, tornado, flood, or similar;

(c) The applicant, participant, parent, guardian, or caretaker demonstrates that a good cause beyond the applicant's participant's parent's guardian's, or caretaker's control occurred; or

(d)1. Failure to receive the department's request for information or notification for a reason not attributable to the applicant, participant, parent, guardian, or caretaker occurred.

2. Lack of a forwarding address shall be attributable to the applicant, participant, parent, guardian, or caretaker.

(4) For a Medicaid enrollee who is a HIPP program participant:

(a) The department shall pay all group health insurance plan premiums and deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under Medicaid; and

(b)1. The individual's group health insurance plan shall be the primary payer; and

2. The department shall be the payer of last resort.

(5) For a HIPP program participating family member who is not a Medicaid enrollee:

(a) The department shall pay a HIPP program premium; and

(b) Not pay a deductible, coinsurance or other cost-sharing obligation.

(6) If an individual who was a Medicaid enrollee at the time the department initiated a HIPP program cost effectiveness review for the individual loses Medicaid eligibility by the time the cost effectiveness review has been conducted, the department shall not enroll the individual or any family member into the HIPP program.

Section 3. Wrap-around Coverage. (1) If a service to which a health insurance premium payment program participant would be entitled via Medicaid is not provided by the individual's group health insurance plan, the department shall reimburse for the service.

(2) For a service referenced in subsection (1) of this section, the department shall reimburse:

(a) The provider of the service; and

(b) In accordance with the department's administrative regulation governing reimbursement for the given service. For example, a wrap-around dental service shall be reimbursed in accordance with 907 KAR 1:626.

Section 4. Cost Effectiveness. (1) Enrollment in a group health insurance plan shall be considered cost effective when the cost of paying the premiums, coinsurance, deductibles and other cost-sharing obligations, and additional administrative costs is estimated to be less than the amount paid for an equivalent set of Medicaid services.

(2) When determining cost effectiveness of a group health insurance plan, the department shall consider the following information:

(a) The cost of the insurance premium, coinsurance, and deductible;

(b) The scope of services covered under the insurance plan, including exclusions for pre-existing conditions, exclusions to enrollment, and lifetime maximum benefits imposed;

(c) The average anticipated Medicaid utilization:

1. By age, sex, and coverage group for persons covered under the insurance plan; and

2. Using a statewide average for the geographic component;

(d) The specific health-related circumstances of the persons covered under the insurance plan; and

(e) Annual administrative expenditures of an amount determined by the department per Medicaid participant covered under the group health insurance plan.

Section 5. Cost Effectiveness Review. (1) The department shall complete a cost effectiveness review:

(a) At least once every six (6) months for an employer-related group health insurance plan; or

(b) Annually for a non-employer-related group health insurance plan.

(2) The department shall perform a cost effectiveness redetermination if:

(a) A predetermined premium rate, deductible, or coinsurance increases;

(b) Any of the individuals covered under the group health insurance plan lose full Medicaid eligibility; or

(c) There is a:

1. Change in Medicaid eligibility;

2. Loss of employment when the insurance is through an employer; or

3. A decrease in the services covered under the policy.

(3)(a) A health insurance premium payment program participant who is a Medicaid enrollee, or a person on that individual's behalf, shall report all changes concerning health insurance coverage to the participant's local Department for Community Based Services (DCBS), Division of Family Support within ten (10) days of the change.

(b) Except as allowed in subsection (4) of this section, if a Medicaid enrollee who is a health insurance premium payment program participant fails to comply with paragraph (a) of this subsection, the department shall disenroll the HIPP program participating Medicaid enrollee, and any family member enrolled in the HIPP program directly through the individual if applicable, from the HIPP program.

(4) The department shall not disenroll an individual from HIPP program participation if the individual demonstrates to the department, within thirty (30) days of notice of HIPP program disenrollment, good cause for failing to comply with subsection (3) of this section.

(5) Good cause for failing to comply with subsection (3) of this section shall exist if:

1. There was a serious illness or death of the individual, parent, guardian, or caretaker or a member of the individual's, parent's guardian's, or caretaker's family;

2. There was a family emergency or household disaster – for example a fire, flood, tornado, or similar;

3. The individual, parent, guardian, or caretaker offers a good cause beyond the individual's, parent's, guardian's, or caretaker's control; or

4.a. There was a failure to receive the department's request for information or notification for a reason not attributable to the individual, parent, guardian, or caretaker.

b. Lack of a forwarding address shall be attributable to the individual, parent, guardian, or caretaker.

Section 6. Coverage of Non-Medicaid Family Members. (1) If determined to be cost effective, the department shall enroll a family member who is not a Medicaid enrollee into the HIPP program if the family member has group health insurance plan coverage through which the department can obtain health insurance coverage for a Medicaid-enrollee in the family.

(2) The needs of a family member who is not a Medicaid enrollee shall not be taken into consideration when determining cost effectiveness of a group health insurance plan.

(3) The department shall:

(a) Pay a HIPP program premium on behalf of a HIPP program participating family member who is not a Medicaid enrollee; and

(b) Not pay a deductible, coinsurance, or other cost-sharing

obligation on behalf of a HIPP program-participating family member who is not a Medicaid enrollee.

Section 7. Exceptions. The department shall not pay a premium:

(1) For a group health insurance plan if the plan is designed to provide coverage for a period of time less than the standard one-year coverage period;

(2) For a group health insurance plan if the plan is a school plan offered on the basis of attendance or enrollment at the school;

(3) If the premium is used to meet a spend-down obligation when all persons in the household are eligible or potentially eligible only under the spend-down program pursuant to 907 KAR 1:640.

(a) If any household member is eligible for full Medicaid benefits, the premium shall be paid if it is determined to be cost effective when considering only the household members receiving full Medicaid coverage.

(b) In a case described in subparagraph 1 of this paragraph, the premium shall not be allowed as a deduction to meet the spend-down obligation for those household members participating in the spend-down program;

(4) For a group health insurance plan if the plan is an indemnity policy which supplements the policy holder's income or pays only a predetermined amount for services covered under the policy; or

Section 8. Duplicate Policies. If more than one (1) group health insurance plan or policy is available, the department shall pay only for the most cost-effective plan except as allowed in subsection (2) of this section.

(2) In a circumstance where the department is buying in to the cost of Medicare Part A or Part B for an eligible Medicare beneficiary, the cost of premiums for a Medicare supplemental insurance policy may also be paid if the department determines that it is likely to be cost effective to do so.

Section 9. Discontinuance of Premium Payments. (1) If all Medicaid-enrollee household members covered under a group health insurance plan lose Medicaid eligibility, the department shall discontinue HIPP program payments as of the month of Medicaid ineligibility.

(2) If one (1) or more, but not all, of a household's Medicaid-enrollee members covered under a group health insurance plan lose Medicaid eligibility, the department shall re-determine cost effectiveness of the group health insurance plan in accordance with Section 5(2).

Section 10. Health Insurance Premium Payment Program Payment Effective Date. (1)(a) If health insurance premium payment program payments for cost-effective group health insurance plans shall begin with the month the health insurance premium payment program application is received by the department, or the effective
date of Medicaid eligibility, whichever is later.

(b) If an individual is not currently enrolled in a cost effective group health insurance plan, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

(2) The department shall not make a payment for a premium which is used as an
income deduction when determining individual eligibility for Medicaid.

Section 11. Premium Refunds. The department shall be entitled to any premium refund due to:

(1) Overpayment of a premium; or

(2) Payment for an inactive policy for any time period for which the department paid the premium.

Section 12. Notice. The department shall inform a health insurance premium payment program:

(1) Applicant, in writing, of the department's initial decision regarding cost effectiveness of a group health insurance plan and health insurance premium payment program payment; or

(2) Participating household, in writing:

(a) If health insurance premium payment program payments are being discontinued due to Medicaid eligibility being lost by all individuals covered under the group health insurance plan;

(b) If the group health insurance plan is no longer available to the family; or

(c) Of a decision to discontinue health insurance premium payment program payment due to the department's determination that the policy is no longer cost effective.

Section 14. Federal Financial Participation. (1) The department's health insurance premium program shall be contingent upon the receipt of federal financial participation for the program.

(2) If federal financial participation is not provided to the department for the department's health insurance premium program, the program shall cease to exist.

(3) If the Centers for Medicare and Medicaid Services (CMS) disapproves a provision stated in an amendment to the state plan, which is also stated in this administrative regulation, the provision shall be null and void.

Section 15. Material Incorporated by Reference. (1) The "Application for Health Insurance Premium Payment (HIPP) Program, Form PA 41", September 2009 edition is incorporated by reference into this administrative regulation.

(2) The material referenced in subsection (1) of this section is available at:

(a) http://www.chfs.ky.gov/dms/incorporated.htm; or

(b)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: June 25, 2010

FILED WITH LRC: July 1, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2010 at 9 a.m. in the Cabinet for Health and Family Services, Health Services Building, Third Floor, Meeting Room B, 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Department for Medicaid Services' (DMS's) health insurance premium payment (HIPP) program provisions. The HIPP program is a program by which DMS purchases health insurance coverage for an individual by paying the individual's (and family members if applicable) health insurance premiums, deductibles and coinsurance if doing so would be cost effective to DMS. To qualify for the HIPP program, an individual (or at least one individual in the case of a family enrolling in the HIPP program) must be Medicaid eligible; however, the actual benefits are provided by the individual's group health insur-

ance carrier.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide cost-effective medical benefits to Medicaid individuals; thus, prudently utilizing DMS's resources.

(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 providing cost-effective medical benefits to Medicaid individuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing cost-effective medical benefits to Medicaid individuals.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Affected individuals include approximately 1,000 Medicaid individuals and family members that DMS projects could be enrolled into HIPP by calendar year 2013.

(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: Potential HIPP program enrollees will need to provide all required information, including their health insurance carrier's information, to DMS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients would have access to private health insurance with no out-of-pocket costs and non-Medicaid recipients (who are in a household that is participating in the HIPP program) could receive health insurance coverage if determined to be cost effective by DMS.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that 100 could be enrolled into HIPP in calendar year 2010, resulting in a savings to DMS of approximately $2.0 million ($1,593,400 federal/$406,600 state)

(b) On a continuing basis: DMS projects the following HIPP enrollment and corresponding savings for calendar years 2011, 2012 and 2013 respectively:

1. 2011: 500 cases with a savings of $10.0 million ($7,967,000 federal/$2,033,000 state)

2. 2012: 750 cases with a savings of $15.0 million ($11,950,500 federal/$3,049,500)

3. 2013: 1,000 cases with a savings of $20.0 million $15,934,000 federal/$4,066,000 state) The projected savings assume that all individuals selected for HIPP program participating will participate; thus, actual savings could possibly be less. DMS intends to aggressively educate potential HIPP program participants regarding the benefits of the HIPP program in order to achieve a high participation rate.

(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 from state general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied as children are exempt from Medicaid disenrollment pursuant to 42 U.S.C. 1396e(b)(2).

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 Medicaid Services will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), 205.560(1), 194A.030(2), 194A.050(1), 194A.010(1) and 42 U.S.C. 1396e(a) through (e).

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? DMS projects no revenue to be generated by the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue to be generated by the administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS anticipates that 100 could be enrolled into HIPP in calendar year 2010, resulting in a net savings to DMS of approximately $2.0 million ($1,593,400 federal/$406,600 state.)

(d) How much will it cost to administer this program for subsequent years? DMS projects the following HIPP enrollment and corresponding savings for calendar years 2011, 2012 and 2013 respectively:

1. 2011: 500 cases with a savings of $10.0 million ($7,967,000 federal/$2,033,000 state)

2. 2012: 750 cases with a savings of $15.0 million ($11,950,500 federal/$3,049,500)

3. 2013: 1,000 cases with a savings of $20.0 million ($15,934,000 federal/$4,066,000 state.) The projected savings assume that all individuals selected for HIPP program participating will participate; thus, actual savings could possibly be less. DMS intends to aggressively educate potential HIPP program participants regarding the benefits of the HIPP program in order to achieve a high participation rate.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 13, 2010

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 13, 2010, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Leslie Combs, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the June 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, Alice Forgy-Kerr, and Joey Pendleton and Representatives Leslie Combs, Robert Damron, Jimmie Lee, and Danny Ford.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Dennis Taulbee, Jevonda Keith, Council on Postsecondary Education; Nathan Goldman, Board of Nursing; Ann D'Angelo, Godwin Onodu, Transportation Cabinet; Robin Ritter, Patrick Shirley, Mindy Yates, Office of Vocational Rehabilitation; Patricia Cooksey, Marc Guilfoil, Susan Bryson Speckert, Kentucky Horse Racing Commission; Carrie Banahan, Mary Begley, Stephanie Brammer Barnes, Virginia Carrington, Elizabeth Caywood, Jennifer Devine, Lisa Osbourne, Cabinet for Health and Family Services; Caroline Ridgeway, Convenient Care Association.

The Administrative Regulation Review Subcommittee met on Tuesday, July 13, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges

13 KAR 1:020. Private college licensing. Dennis L. Taulbee, general counsel, and Jevonda Keith, senior associate, represented the council.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:510. Voluntary relinquishment of a license or credential. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and the function served by this administrative regulation, as required by KRS 13A.220; and (3) 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.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:020. Drivers' privacy protection. Ann D'Angelo, assistant general counsel, and Godwin Onodu, assistant director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 8 to incorporate two (2) additional forms by reference. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Vocational Rehabilitation: Administration

781 KAR 1:020. General provisions for operations of the Office of Vocational Rehabilitation. Robin N. Ritter, program administrator; Patrick B. Shirley, staff attorney; and Mindy Yates, staff assistant, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and the function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to delete unnecessary definitions; and (4) to amend Sections 2, 3, 5 through 8, 11, 12, and 16 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add additional citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and the function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to add necessary definitions; and (5) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Division of Licensing: Thoroughbred Racing

810 KAR 1:025 & E. Licensing thoroughbred racing. Patricia J. Cooksey, director of public relations; Marc A. Guilfoil, deputy executive director; and Susan Bryson Speckert, general counsel, represented the commission.

In response to questions by Representative Damron, Ms. Speckert stated that it was necessary to promulgate these administrative regulations on an emergency basis because a new racetrack may need to be licensed at any time, personnel licensing took place year round, and frivolous appeals were an ongoing problem. The commission approved the fee increases at its board meeting, which was open to the public and announced to all stakeholders.

In response to questions by Representative Ford, Ms. Speckert stated that frivolous appeals were referenced throughout these administrative regulations based on the Civil Rules established by the Kentucky Supreme Court. The frivolous appeals prohibition is needed because it is currently possible that a jockey, for example, may be suspended from racing; however, that suspension could be frivolously appealed with the appeal date scheduled after an important race in which the jockey intended to race. The jockey would be able to race and then withdraw the frivolous appeal to serve the suspension at a time convenient to the jockey. Ms. Speckert stated that the commission would determine if an appeal was or was not frivolous, and further due process could then be sought through the judicial system.

In response to questions by Senator Kerr and Representative Ford, Ms. Speckert stated that in May 2008 the commission voted for the fee increases after an audit from the State Auditor, Critt Luallen, demonstrated a need for the increases. Ms. Speckert stated that the administrative regulations had been in place as emergency administrative regulations for two (2) years, had been publicly vetted with stakeholders, and had not been opposed by stakeholders. The commission representatives and subcommittee members discussed the possibility of deferring some or all of these administrative regulations until the August meeting; however, doing so allowed for a potential gap between the date the administrative regulations would become effective and the date the emergency provisions would expire. Subcommittee members discussed ramifications of deferral and a possible motion to request deferral. The agency agreed to potential deferral if the Subcommittee approved such a motion. Ms. Speckert stated that live racing would be taking place during the potential nine (9) day gap between when the emergency administrative regulations would expire and the ordinary administrative regulations would become effective, if the administrative regulations were deferred.

A motion was made and seconded to defer consideration of these administrative regulations until the August meeting. A roll call vote was taken. The motion was not approved by a vote of four (4)

to two (2).

Senator Kerr stated that it was unnecessary to take punitive action toward this commission, but it was important to take prudent action to eliminate the statutory loophole that allowed a fee to be established or increased through an emergency administrative regulation that was then withdrawn and refiled in such a way that legislative oversight was significantly delayed. She had not received any complaints from stakeholders regarding the fees and did not wish to penalize the horse industry. She questioned if raising fees during this economic climate, which had hit the racing industry severely, was prudent.

In response to a question by Senator Pendleton, Subcommittee staff stated that KRS Chapter 13A did not currently prohibit establishing or increasing fees by administrative regulation and did not prohibit an agency from repeatedly withdrawing and refiling an administrative regulation that was not identical to or substantially the same as a prior emergency administrative regulation.

In response to questions by Representative Lee, Ms. Speckert stated that the commission had been collecting the fee since 2008 because the administrative regulation had been withdrawn and refiled several times. Subcommittee staff stated that some of the issues that delayed progress of the administrative regulations were legal problems. The authorizing statute had been amended by the General Assembly to authorize some of the changes made by these administrative regulations. Fees were collected before the amendments were made to the authorizing statute. Mr. Guilfoil stated that the amendment that was necessary to the authorizing statute pertained to clarifying the categories for licensure.

Representative Lee requested that the commission provide a timeline documenting each time these administrative regulations were withdrawn and refiled with the rationale for the action, including how the administrative regulations met statutory criteria for an emergency.

In response to a question by Representative Damron, Ms. Speckert stated that the commission was not purposely trying to create a situation where a fee was collected without public input or legislative oversight. It took time to work out many of the legal issues, and all of the commission meetings regarding the fees were open to the public. Mr. Guilfoil added that harness racing stakeholders had been notified of the fee increases, but he was not sure if that was also true for all groups of thoroughbred stakeholders.

In response to a question by Senator Kerr, Subcommittee staff stated that the compromises made to the administrative regulations pertained to legal issues and not to the fee increases.

Representatives Lee and Damron both stated that it was inherently wrong to raise fees without legislative oversight and representation by repeatedly filing and withdrawing an emergency administrative regulation. Subcommittee members discussed the potential need to amend KRS Chapter 13A to close this loophole.

A motion was made and seconded to draft a letter from the Subcommittee to the governor, the Legislative Research Commission, and all executive branch agencies to: (1) express the Subcommittee's displeasure with the statutory loophole that allows an agency to raise or establish fees through an emergency administrative regulation, especially if that administrative regulation is then repeatedly withdrawn and refiled so that the fee remains effective without legislative oversight; (2) express the Subcommittee's recommendation that KRS Chapter 13A be amended during the next regular session of the General Assembly to prohibit increasing or establishing fees by emergency administrative regulation and to express the Subcommittee's intent to collectively prefile a cosponsored bill to do the same; and (3) include in the letter the concern regarding fee increases being placed on the horse racing community when the industry was struggling in a difficult economic climate. The question was called, and a roll call vote was taken. The motion was approved unanimously by all members present.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 and the licensing application to update the licensing categories; (2) to amend Section 4 to establish licensing requirements for equine therapists; (3) to amend Section 9 to limit out of competition testing to those authorized by administrative regulation; (4) to amend Section 14(1)(s)1. to delete the prohibition on firearm possession by a licensee on racing association grounds; (5) to amend Section 23 to update the licensing application and the veterinarian approval form; and (6) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION AND CONFORMITY paragraphs and Sections 2 through 5, 9 through 14, 16 through 21, and 23 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:037 & E. Licensing of racing associations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 11 and the Change of Control form to insert omitted text; and (2) to amend the TITLE; the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1, 4, 8, 9, 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.

810 KAR 1:100 & E. Frivolous appeals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:037 & E. Licensing of racing associations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 11 and the Change of Control form to insert omitted text; and (2) to amend the TITLE; the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1, 4, 8, 9, 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.

811 KAR 1:230 & E. Frivolous appeals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:130 & E. Frivolous appeals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 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: Certificate of Need

900 KAR 6:060. Timetable for submission of certificate of need applications. Carrie Banahan, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (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 and 2 to: (a) comply with the drafting and format requirements of KRS Chapter 13A; and (b) change the batching cycle for cardiac catheterizations from the public notice given in May and November to the public notice given in January and July. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:400. Limited services clinics. Mary Begley, inspec-

tor general, represented the division. Caroline Ridgway, policy director, Commonwealth Care Association appeared in support of this administrative regulation.

Ms. Ridgway thanked the office for cooperation in amending this administrative regulation and requested reconsidering the eighteen (18) month time frame for revisiting which services are appropriate for a limited services clinic. She preferred a shorter time frame.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to: (a) allow off-site community vaccination and health screening drives; (b) allow vaccinations for children age eleven (11) and older, as well as the influenza vaccine for patients age twenty-four (24) months and older; (c) require the clinic to inform the patient that the patient does not have to buy recommended or prescribed items from the host retail location; (d) include patient education services for diabetes, hyperlipidemia, and hypertension; (e) specify that a clinic may order specific lab testing and that only Clinical Laboratory Improvement Amendments waived testing may be done on-site; (f) allow services pursuant to a patient's plan of care or order from another practitioner; (g) allow nonemergency episodic treatment for an acute exacerbation of a chronic condition; (h) allow initial diagnosis of chronic illness, along with doctor referral, and thirty (30) day interim treatment; (i) allow a thirty (30) day prescription for maintenance medication, along with documented efforts to contact the primary prescriber; and (j) if the cabinet receives requests for modification of the list of services, convene an advisory committee to review the list and make recommendations no sooner than eighteen (18) months from the effective date of this administrative regulation; (2) to amend Section 4 to specify information in the patient rights policies; (3) to amend Sections 4 and 5 to specify medical record requirements; and (4) to amend Section 7 to require that trash containers be cleaned regularly, as needed, rather than daily. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:410. Child support collection and enforcement. Jennifer Devine, internal policy analyst, and Lisa Osborne, staff attorney, represented the department.

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 specify citations; and (2) to amend Sections 2 through 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.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:50E. Work Now Kentucky Program. Virginia Carrington, branch manager, and Elizabeth Caywood, internal policy analyst, represented the division.

The following administrative regulations were deferred to the August 10, 2010, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:066 & E. Certification and selection of eligibles for appointment.

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing

200 KAR 5:315. Debarment.

GENERAL GOVERNMENT: Board of Veterinary Examiners: Board

201 KAR 16:030 & E. License, renewal notice, exemption.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training: General Training Provision

503 KAR 3:010. Basic Law enforcement training course recruit conduct requirements; procedures and penalties.

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

503 KAR 3:110. Certified court security officers academy trainee requirements; misconduct; penalties; discipline procedures.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

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

900 KAR 6:020. Certificate of need application fees schedule.

The subcommittee adjourned at 2:30 p.m. until August 10, 2010.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of June 3, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of June 3, 2010, having been referred to the Committee on June 2, 2010, pursuant to KRS 13A.290(6):

301 KAR 2:172
301 KAR 2:178
401 KAR 8:020
401 KAR 8:070
401 KAR 8:550
401 KAR 8:510
401 KAR 8:300
401 KAR 8:250
401 KAR 8:200

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 3, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **B - 2**

The Locator Index lists all administrative regulations published in VOLUME 37 of the Administrative Register from July 2010 through June 2011. 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 36 are those administrative regulations that were originally published in VOLUME 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

KRS Index **B - 7**

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 37 of the Administrative Register.

Technical Amendment Index **B - 11**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 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 **B - 12**

The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

Regulation Number	36 Ky.R. Page No.	Effective Date

VOLUME 36

The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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	36 Ky.R. Page No.	Effective Date
101 KAR 2:066E		
Resubmitted	1860	1-4-10
Withdrawn		7-19-10
201 KAR 16:030E		
Resubmitted	2280	5-13-10
401 KAR 8:010E		
Resubmitted	2281	4-20-10
503 KAR 1:140E	1871	1-5-10
Replaced	2178	6-4-10
505 KAR 1:160E		
Resubmitted	1180	11-13-09
703 KAR 5:180E		
Resubmitted	2020-*M*	1-15-10
810 KAR 1:025E		
Resubmitted	2158	3-26-10
810 KAR 1:037E	2165	3-17-10
810 KAR 1:100E		
Resubmitted	2168	3-17-10
811 KAR 1:037E	2169	3-17-10
811 KAR 1:070E		
Resubmitted	2023-*M*	1-15-10
811 KAR 1:230		
Resubmitted	2172	3-17-10
811 KAR 2:130		
Resubmitted	2174	3-17-10
815 KAR 20:050E		
Resubmitted	992	10-01-09
Replaced	2067-*M*	6-4-10
906 KAR 1:180E		
Resubmitted	1184	11-13-09
Replaced	2197	6-4-10
921 KAR 2:530E		
Resubmitted	2294	5-14-10

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	36 Ky.R. Page No.	Effective Date
11 KAR 5:145		
Amended	1508	
11 KAR 12:060		
Amended	2055-*A*	
13 KAR 1:020		
Amended	2347	
31 KAR 3:010		
Amended	1095	
As Amended	1434	
31 KAR 6:010		
Amended	2110-*M*	
As Amended	2176	6-4-10
101 KAR 2:066		
Amended	1963	
Withdrawn		7-19-10
102 KAR 1:160		
Amended	1966	
As Amended	2177	6-4-10
102 KAR 1:225		
Amended	1967	
Amended	2056-*A*	
As Amended	2299	
Amended	2061-*A*	
As Amended	2302	6-4-10
200 KAR 5:314		
Amended	1300	
As Amended	2177	6-4-10
200 KAR 5:315		
Amended	616	
201 KAR 10:050		
Amended	1301	
As Amended	2047-*M*	
201 KAR 16:030		
Amended	2353	
201 KAR 20:240		
Amended	2071-*A*	6-16-10
201 KAR 20:450		
Amended	527	
201 KAR 20:490		
Amended	2073-*A*	
As Amended	2312	6-16-10
201 KAR 20:510	2402	(See 37 Ky.R.)
201 KAR 22:020		
Amended	2208	
Withdrawn		6-15-10
201 KAR 22:045		(See 37 Ky.R.)
Amended	2209	
201 KAR 22:135		(See 37 Ky.R.)
Amended	2211	
201 KAR 30:050		
Amended	152	
Amended	569	
301 KAR 1:140		(See 37 Ky.R.)
Amended	2212	
301 KAR 2:049		(See 37 Ky.R.)
Amended	2215	
301 KAR 2:132		(See 37 Ky.R.)
Amended	2075-*A*	
Amended	2335	
301 KAR 2:172		
Amended	2080-*A*	
As Amended	2314	6-3-10
301 KAR 2:178		
Amended	2082-*A*	
As Amended	2316	6-3-10
401 KAR 5:045		(See 37 Ky.R.)
Amended	2112-*M*	
401 KAR 5:070		
Amended	2114-*M*	
401 KAR 5:075		(See 37 Ky.R.)
Amended	2119-*M*	
Amended	2339	
401 KAR 8:010		
Amended		
401 KAR 8:020		
Amended	2088-*A*	
As Amended	2321	6-3-10
401 KAR 8:070		
Amended	2092-*A*	
401 KAR 8:150		(See 37 Ky.R.)

Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	2094-*A*	
401 KAR 8:200		
Amended	2097-*A*	
As Amended	2323	6-3-10
401 KAR 8:250		
Amended	2099-*A*	
As Amended	2324	
401 KAR 8:300		
Amended	2100-*A*	
As Amended	2324	6-3-10
401 KAR 8:510		
Amended	2101-*A*	
As Amended	2324	6-3-10
401 KAR 8:550		
Amended	2103-*A*	
As Amended	2325	6-3-10
401 KAR 11:010		
Amended	2094	
401 KAR 11:030		(See 37 Ky.R.)
Amended	2105-*A*	
401 KAR 47:090		(See 37 Ky.R.)
Amended	620	
401 KAR 59:015		
Amended	2355	
405 KAR 8:010		
Amended	2360	(See 37 Ky.R.)
503 KAR 1:140		
Amended	1989	
As Amended	2178	6-4-10
503 KAR 3:010		
Amended	2373	
503 KAR 3:040		
Amended	2379	
503 KAR 3:110		
Amended	2383	
601 KAR 1:200		(See 37 Ky.R.)
Amended	2220	
601 KAR 1:220	1571	
Amended	2058-*M*	
As Amended	2184	6-4-10
601 KAR 2:020		
Amended	2388	(See 37 Ky.R.)
601 KAR 12:060		
Amended	1116	
As Amended	2325	6-4-10
603 KAR 4:045		
Amended	2124-*M*	
As Amended	2184	
702 KAR 3:030		
Amended	2108-*A*	
As Amended	2326	
702 KAR 3:246		
Amended	2225	
703 KAR 5:060		
Amended	2109-*A*	(See 37 Ky.R.)
703 KAR 5:180	2144-*M*	
704 KAR 3:540	2260	(See 37 Ky.R.)
725 KAR 1:061		
Amended	2227	
Withdrawn		6-15-10
781 KAR 1:020		
Amended	2230	(See 37 Ky.R.)
781 KAR 1:030		
Amended	2232	(See 37 Ky.R.)
781 KAR 1:040		
Amended	2235	
Withdrawn		6-15-10
803 KAR 30:010		(See 37 Ky.R.)
Amended	2238	
804 KAR 11:030		
Amended	2112-*A*	
Amended	2344	
Withdrawn		7-7-10
810 KAR 1:025		
Amended	2244	(See 37 Ky.R.)
810 KAR 1:037	2261	(See 37 Ky.R.)
810 KAR 1:100	2264	(See 37 Ky.R.)
811 KAR 1:037	2265	(See 37 Ky.R.)
811 KAR 1:070		
Amended	2127-*M*	6-4-10
As Amended	2187	
811 KAR 1:230	2268	(See 37 Ky.R.)
811 KAR 2:130	2269	(See 37 Ky.R.)
815 KAR 7:070		(See 37 Ky.R.)
Amended	2251	
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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 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: Finalized 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.

The Board of Nursing has requested that technical amendments be made to reflect the statutory change of the term "Advance Registered Nurse Practitioner" or "ARNP" to "Advance Practice Registered Nurse" or "APRN". This change was applied to 201 KAR 20:059, 201 KAR 20:161, 201 KAR 20:163, 201 KAR 20:215, 201 KAR 20:220, 201 KAR 20:235, 201 KAR 20:400, 201 KAR 20:410, 201 KAR 20:450, and 201 KAR 20:490, as of July 15, 2010.

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