ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 6
WEDNESDAY, DECEMBER 1, 2010

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet December 14, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1377-1379** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2010 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 37, Kentucky Register, page 318 (short form: 37 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System

General Rules

102 KAR 1:225. General compliance with federal tax laws.

102 KAR 1:230. Limitations on benefits.

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

Department of Revenue
Office of Sales and Excise Taxes

Forms

103 KAR 3:050. Miscellaneous taxes forms manual. (Not Amended After Comments) (Deferred from November)

Office of Income Taxation

Income Tax; General Administration

103 KAR 15:180. Kentucky New Markets Development Program Tax Credit. (Amended After Comments)

Office of the Secretary

Purchasing

200 KAR 5:400. Kentucky resident bidder reciprocal preference. (Not Amended After Comments)

GENERAL GOVERNMENT CABINET
Board of Pharmacy

Board

201 KAR 2:165. Transfer of prescription information.

Board of Dentistry

Board

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, 8:70, and 8:490. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:500 & E. Board organization. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:510 & E. Advisory opinions. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:520 & E. Fees and fines. ("E" expires 2/10/2011) (Not Amended After Comments) (Deferred from November)

201 KAR 8:530 & E. Licensure of dentists. ("E" expires 2/10/2011) (Not Amended After Comments) (Deferred from November)

201 KAR 8:540 & E. Dental practices. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:560 & E. Licensure of dental hygienists. ("E" expires 2/10/2011) (Not Amended After Comments) (Deferred from November)

Board of Social Work

Board

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201 KAR 23:050. Renewal, termination, reinstatement of license.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

201 KAR 23:075. Continuing education.

Board

201 KAR 36:070. Education requirements. (Deferred from October)

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

Game

301 KAR 2:221 & E. Waterfowl seasons and limits. ("E" expires 4/13/2011)

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands. ("E" expires 4/13/2011)

Wildlife

301 KAR 4:050. Swan Lake Unit of Boatwright Wildlife Management Area.

DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health

Livestock Sanitation

302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky. (Deferred from November)

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids. (Deferred from November)

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
Kentucky State Nature Preserves Commission

Nature Preserves Commission

400 KAR 2:090. Management, use, and protection of nature preserves.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

Motor Vehicle Tax
601 KAR 9:140. Temporary registration plates.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education

Office of Instruction
704 KAR 3:303. Required core academic standards. (Not Amended After Comments)
704 KAR 3:305. Minimum requirements for high school graduation. (Deferred from August)

LABOR CABINET
Department of Workers' Claims

Department
803 KAR 25:089. Workers' compensation medical fee schedule for physicians. (Amended After Comments)
803 KAR 25:091 & E. Workers' compensation hospital fee schedule. ("E" expires 3/14/2011) (Not Amended After Comments)

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access

Health Insurance Contracts
806 KAR 17:320. Kentucky Access requirements. (Amended After Comments)

Kentucky Horse Racing Commission

Thoroughbred Racing
810 KAR 1:001. Definitions. (Not Amended After Comments)(Deferred from November)
810 KAR 1:009 & E. Jockeys and apprentices. ("E" expires 1/14/2011) (Not Amended After Comments) (Deferred from October)
810 KAR 1:011. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
810 KAR 1:026 & E. Racing associations. ("E" expires 1/14/2011) (Not Amended After Comments) (Deferred from October)
810 KAR 1:120. Exotic wagering. (Not Amended After Comments) (Deferred from November)
810 KAR 1:130. Postrace sampling and testing procedures. (Deferred from November)

Harness Racing
811 KAR 1:005. Definitions. (Not Amended After Comments) (Deferred from November)
811 KAR 1:125. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
811 KAR 1:220. Harness racing at county fairs. (Deferred from November)
811 KAR 1:250. Exotic wagering. (Not Amended After Comments) (Deferred from November)
811 KAR 1:260. Postrace sampling and testing procedures. (Deferred from November)

Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:010. Definitions. (Not Amended After Comments) (Deferred from November)
811 KAR 2:060. Pari-mutuel wagering. (Not Amended After Comments) (Deferred from November)
811 KAR 2:160. Exotic wagering. (Not Amended After Comments) (Deferred from November)
811 KAR 2:170. Postrace sampling and testing procedures. (Deferred from November)

Department of Housing, Buildings and Construction
Division of Building Code Enforcement

Electrical Inspectors
815 KAR 35:100. Electrical continuing education procedure.

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

Kentucky Early Intervention System
902 KAR 30:001 & E. Definitions. ("E" expires 2/10/2011) (Amended After Comments)(Deferred from November)
902 KAR 30:110 & E. Point of entry and service coordination. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)
902 KAR 30:120 & E. Evaluation and eligibility. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)
902 KAR 30:130 & E. Assessment, service planning, and assistive technology. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)
902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170. (Deferred from September) (Deferred from November)
902 KAR 30:150 & E. Personnel qualification. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)
902 KAR 30:160 & E. Covered services. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)
902 KAR 30:180 & E. Procedural safeguards. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)
902 KAR 30:200 & E. Coverage and payment for services. ("E" expires 2/10/2011) (Amended After Comments) (Deferred from November)

Department for Medicaid Services
Division of Medical Management

Payment and Services
907 KAR 3:215 & E. Tobacco cessation coverage and reimbursement. ("E" expires 3/30/2011)

Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Behavioral Health

Mental Health
908 KAR 2:230. Kentucky family peer support specialist.

Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management

Institutional Care
908 KAR 3:050. Per diem rates.

REMOVED FROM DECEMBER 2010 AGENDA

GENERAL GOVERNMENT CABINET
Board of Licensure for Private Investigators

Board
201 KAR 41:100. Verification of 240 hour employees. (Deferred from November)

Board of Licensure for Massage Therapy

Board
201 KAR 42:010. Goals for massage therapy sessions. (Comments Received, SOC ext)
201 KAR 42:020. Fees. (Comments Received, SOC ext)
201 KAR 42:030. Licensee's change of name, home address, or place of business. (Comments Received, SOC ext)
201 KAR 42:035. Application process, exam, and curriculum requirements. (Comments Received, SOC ext)
201 KAR 42:040. Renewal. (Comments Received, SOC ext)
201 KAR 42:050. Complaint procedure and disciplinary action. (Comments Received, SOC ext)
201 KAR 42:060. Code of ethics, and standards of practice for massage therapists. (Comments Received, SOC ext)
201 KAR 42:070. Endorsement. (Comments Received, SOC ext)
201 KAR 42:080. Programs of massage therapy instruction. (Comments Received, SOC ext)
201 KAR 42:110. Continuing education requirements. (Comments Received, SOC ext)

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:082. Transportation and holding of live exotic wildlife. (Comments Received, SOC ext)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management

Solid Waste Planning
401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration. (Comments Received, SOC ext.)

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

Division
601 KAR 1:018 & E. Special overweight or overdimensional permits. ("E" expires 2/8/2011) (Deferred from October)

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division

Trade Practices and Frauds
806 KAR 12:150. Annuity disclosures. (Comments Received, SOC ext.)
806 KAR 12:170. Life insurance disclosures. (Comments Received, SOC ext.)

Kentucky Horse Racing Commission

Thoroughbred Racing
810 KAR 1:110 & E. Out-of-competition testing. ("E" expires 3/14/2011) (Comment Received, SOC ext.)
Harness Racing
811 KAR 1:240 & E. Out-of-competition testing. ("E" expires 3/14/2011)(Comments Received, SOC ext.)
Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:150 & E. Out-of-competition testing. ("E" expires 3/14/2011)(Comments Received, SOC ext.)

Department of Housing, Buildings and Construction
Division of Building Code Enforcement

Kentucky Building Code
815 KAR 7:120. Kentucky building code. (Comments Received, SOC ext.)
815 KAR 7:125. Kentucky residential code. (Comments Received, SOC ext.)

Division of Plumbing

Plumbing
815 KAR 20:100. Joints and connections. (Deferred from August)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care

Health Services and Facilities
902 KAR 20:410 & E. Specialty intermediate care clinics. ("E" expires 3/30/2010) (Comments Received; SOC ext.)

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, NOVEMBER 15, 2010

STATEMENT OF EMERGENCY
32 KAR 1:030E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 under House Bill No. 88 that was passed by the 2010 Kentucky General Assembly during regular session and signed by the Governor on April 9, 2010. House Bill No. 88 will be effective on November 3, 2010. The Kentucky Registry of Election Finance ("registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g) and to prescribe official forms for the making of required reports under KRS 121.120(4)(a). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would not be sufficient because the current reporting forms for disclosing campaign finances are not consistent with the changes under House Bill No. 88. The revised forms for use by persons and entities regulated by the registry must be made available by November 11, 2010, the first filing deadline for an election finance statement following the effective date of 2010 House Bill 88, so as to ensure consistency on all required filings by candidates, slates of candidates, and committees. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
CRAIG C. DILGER, Chairman

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Emergency Amendment)

32 KAR 1:030E. Election finance statement forms; campaign contributions or expenditures in excess of $3,000.

RELATES TO: KRS 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
EFFECTIVE: November 2, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation specifies the forms to be used by candidates, slates of candidates,[~~campaigns~~] and committees and incorporates those forms by reference. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121.

Section 1. The following candidates, slates of candidates, and committees shall file the reports required by KRS 121.180 on the forms incorporated by reference in this administrative regulation:

(1) Candidate campaign funds, gubernatorial slate campaign funds, and[~~candidate~~] campaign committees receiving contributions or making expenditures in excess of $3,000; and

(2) All permanent committees, political issues committees, caucus campaign committees, inaugural committees, and political party executive committees regardless of the amount of contributions or expenditures.

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

(a) "Election Finance Statement", reference KREF 006, revised 10/2010[~~05/2005~~];

(b) "County Executive and District Committee Election Finance Statement", reference KREF 006/E-C&D, revised 10/2010[~~KREF 006E_ C & D, revised 05/2005~~];

(c) "State Executive Committee Election Finance Statement", reference KREF 006/E-S, revised 10/2010[~~KREF 006/E-S, revised 05/2005~~];

(d) "Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 10/2010[~~05/2005~~];

(e) "Permanent Committee (PAC) Election Finance Statement", reference KREF 006/P, revised 10/2010[~~05/2005~~]; and

(f) "Caucus Campaign Committee Election Finance Statement", reference KREF 006/C, revised 10/2010[~~05/2005~~].

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

CRAIG C. DILGER, Chairman
APPROVED BY AGENCY: October 20, 2010
FILED WITH LRC: November 2, 2010 at 4 p.m.
CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation amends existing forms for the filing of election finance statements by candidates, slates of candidates, and committees, which includes the following specific committee types: campaign committees, county executive committees, district executive committees, state executive committees, permanent committees, caucus campaign committees, and inaugural committees.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) and 121.120(4) require the registry to promulgate this administrative regulation. Changes to existing forms for the filing of Election Finance Statements were necessitated by the passage of 2010 HB 88, effective November 3, 2010. 2010 HB 88 amends KRS 121.180 to require the registry to include an entry reading, "No change since last report." on each paper and electronic form that it supplies for the filing of an election finance statement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of KRS Chapter 121, and 121.120(4), as it prescribes a form for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180 and specifically complies with the provisions of 2010 HB 88.

(2) If 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 the latest version of official reporting forms for the filing of election finance statements by all regulated persons and entities. The amendment further clarifies that gubernatorial slates and all campaign committees who receive contributions or make expenditures in excess of $3,000 are subject to regulation. The inclusion of gubernatorial slates and deletion of "candidate" from campaign committees is a housekeeping measure only. Gubernatorial slates and campaign committees not authorized by any candidate are recognized under existing law (see KRS 121.015(9) and 121.015(3)(a), respectively), and are required to file election finance statements on the same reporting schedule as candidates and campaign committees authorized by candidates.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2010 HB 88 requires the registry to include an entry reading, "No change since last report." on each paper and electronic form that it supplies for the filing of election

finance statements. Amendment to the administrative regulation is necessary to bring the registry's forms into compliance with 2010 HB 88.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the Election Finance Statement forms to be filed by regulated entities and persons into compliance with changes in KRS 121.180 due to the passage of 2010 HB 88 and will further assist in the effective administration of the reporting requirements specified in KRS 121.180.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, and committees required to file reports with the registry will be affected by this administrative regulation. However, this regulation does not create a new requirement as this is a form change only. To the extent the public, media, and other interest groups depend on the registry's disclosure function, they will also 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: No action will be required of the regulated entities. The registry will provide the new forms, both in hard copy format and electronically, to the regulated entities. The change, necessitated by 2010 HB 88, requires the registry to include an entry reading, "No change since last report." on its reporting forms for a filer to designate, if the filer has received no money, loans or other things of value from any source since the date of the last report and has not authorized, incurred, or made any expenditures since that date, during any applicable reporting period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the reporting form will simplify the process of reporting by those candidates, gubernatorial slates and committees that have received no contributions and made no expenditures during any applicable reporting period by providing a check box for "No change since last report." A filer designating "No change since last report." shall only be required to state the balance carried forward from the last report but need not specify receipts or expenditures in further detail, per 2010 HB 88.

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

(a) Initially: Initial costs to administer the program are estimated to be less than $5,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the registry's budget.

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

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidates, slates of candidates, and committees.

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? Commonwealth of Kentucky - General Government - registry of Election Finance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), 121.180 (1),(2),(3), (6) and 2010 HB 88.

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 as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? Changes to the registry's "Election Finance Statement" forms necessitated by 2010 HB 88 will result in an additional cost of $5,000 to the registry of Election Finance in year one, for the printing of new forms and the necessary programming updates to the agency's electronic filing system, to display campaign finance data electronically in the format mandated by 2010 HB 88.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None

Expenditures (+/-): + $5,000 in year one (1) no additional costs in subsequent years.

Other Explanation: N/A

STATEMENT OF EMERGENCY
32 KAR 1:190E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 under 2010 House Bill 151 that was passed by the 2010 Kentucky General Assembly during the 2010 regular session and signed by the Governor on April 12, 2010. In addition, effective July 15, 2008, KRS 118.227(1)(b) requires that any changes made to a slate of candidates must be made on forms prescribed by the State Board of Elections and filed with the Secretary of State. The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under 121.120(1)(g) and prescribe official forms for the making of reports under KRS 121.120(4). Certain forms set forth in 32 KAR 1:190E, specifically KREF Form 040/G - "Gubernatorial Slate Media Report" and KREF Form 034/G - "Notice of Gubernatorial Slate Replacement", are now obsolete due to these legislative changes. Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would not be sufficient because the current reporting forms aiding such disclosure are not consistent with the changes under 2010 HB 151 and KRS 118.227(1)(b). The amendment deleting these forms must be made by November 3, 2010, the first day for gubernatorial slates to file nominating papers to avoid confusion regarding reporting requirements, and an ordinary administrative regulation would not be effective by such date.

This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
CRAIG C. DILGER, Chairman

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Emergency Amendment)

32 KAR 1:190E. Forms for gubernatorial slates of candidates and related filers.

RELATES TO: KRS 121.160(1), 121.180(3), (9)
STATUTORY AUTHORITY: KRS 121.120(1)(g),(4)
EFFECTIVE: November 2, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Kentucky Registry of Election Finance to promulgate administrative regulations and official forms necessary to carry out the provisions of KRS Chapter 121, relating to the registration and reporting by slates of candidates for Governor and Lieutenant Governor. This administrative regulation establishes those forms.

Section 1. Gubernatorial Slates of Candidates Forms. The forms incorporated by reference in Section 2(1)(a) and (b)[~~Section 3(1)(a) through (c)~~] of this administrative regulation, shall be the official forms for slates of candidates for Governor and Lieutenant Governor.

Section 2. [~~Media Reporting. "Gubernatorial Slate Media Report" incorporated by reference in Section 3(1)(d) of this administrative regulation, shall be the official reporting form for mass media organizations and other entities required to file with the Kentucky Registry under KRS 121.180(11)(a). A radio or television station or network shall not be required to file any information other than the information set forth under KRS 121.180(11)(b).~~

~~Section 3.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Slate of Candidates Appointment of Campaign Treasurer" form, KREF 001/G, revised 05/2005; and

(b) "Gubernatorial Slate Campaign Committee Registration" form, KREF 010/G, revised 05/2005[~~;~~

~~(c) "Notice of Gubernatorial Slate Replacement" form, KREF 034/G, revised 05/2005; and~~

~~(d) "Gubernatorial Slate Media Report" form, KREF 040/G, revised 05/2005~~].

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

CRAIG C. DILGER, CHAIRMAN
APPROVED BY AGENCY: October 20, 2010
FILED WITH LRC: November 2, 2010 at 4 p.m.
CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis, General Counsel
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation deletes official forms previously required from gubernatorial slate media providers and gubernatorial slates. The forms are obsolete due to 2010 HB 151 and KRS 118.227(1)(b).

(b) The necessity of this administrative regulation: KRS 121.120(4) requires the Registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports. The forms previously prescribed are no longer required due to changes in the law, specifically 2010 HB 151, which deletes the requirement of a "Gubernatorial Slate Media Report" and KRS 118.227(1)(b), which requires gubernatorial slate replacement forms to be filed with the Secretary of State on a form promulgated by the State Board of Elections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the registration and reporting requirements under KRS 121.160(1), 121.180(3) and 121.180(9).

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the following obsolete forms: KREF Form 040/G - "Gubernatorial Slate Media Report" and KREF Form 034/G - "Notice of Gubernatorial Slate Replacement".

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of reports. Certain prescribed forms are now obsolete due to 2010 HB 151 and KRS 118.227(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of the registration and reporting requirements under KRS 121.160(1), 121.180(3), and 121.180(9).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All gubernatorial slate media providers and gubernatorial slates 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: No actions will be required of the regulated entities to comply with this amendment.

(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 by entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment deletes forms that are obsolete. The amendment will benefit regulated entities by deleting former requirements that no longer exist.

(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 the implementation of this administrative regulation initially.

(b) On a continuing basis: There will be no costs associated with implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funds will be used for the implementation and enforcement of this administrative regulation should there be any costs 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals and entities affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The only state or local government entity impacted by this administrative regulation will be the Kentucky Registry of Election Finance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(4), 121.160(1), 121.180(3) and 121.180(9).

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 for state or local government due to the implementation of this administrative regulation in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated for state or local government due to the implementation of this administrative regulation for subsequent years.

(c) How much will it cost to administer this program for the first year? As this administrative regulation deletes obsolete forms, costs to administer this program, if any, will be minimal and consist of staff time necessary to review Registry materials to delete references to the obsolete forms and prior reporting requirements.

(d) How much will it cost to administer this program for subsequent years? There will be no cost associated with the implementation of this administrative regulation for subsequent years.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

STATEMENT OF EMERGENCY
900 KAR 5:020E

This emergency administrative regulation is being promulgated to become compliant with amendments to KRS 214B.450, which requires the cabinet to implement changes to the State Health Plan to develop Certificate of Need requirements for applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. An ordinary administrative regulation is not sufficient because the changes must be in place on October 13, 2010 when the amendments to KRS 216B.450 are effective. Failure to enact this administrative regulation on an emergency basis will compromise the Cabinet's ability to comply with the new requirements of KRS 216B.450 as applicants will not be able to submit Certificate of Need Applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. KRS 216B.450 allows the establishment of Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities to meet the treatment needs of children ages four (4) to twenty-one (21) who have an emotional disability, persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or development disability. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Emergency Amendment)

900 KAR 5:020E. 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

EFFECTIVE: October 18, 2010

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 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 Update to the 2010-2012 State Health Plan (October 13, 2010) as amended October 13[~~August, 2010~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 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: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(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. Changes to the State Health Plan are necessary to provide Certificate of Need application review criteria for Psychiatric Residential Treatment Facility Level I and Psychiatric Residential Treatment Facility Level II. This administrative regulation incorporates the 2010 Update to the 2010 - 2012 State Health Plan by reference to provide the needed review criteria.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 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 216B.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will update the 2010 - 2012 State Health Plan to establish Certificate of Need requirements for Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. KRS 261B.450 established Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II. The State Health Plan requires revision to incorporate Certificate of Need requirements for these new licensure types.

(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 to provide Certificate of Need requirements.

(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 Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.

(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 Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II are now established. These changes may increase access to these services in the state where access may not be available.

(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. This administrative regulation incorporates the 2010 Update to 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

STATEMENT OF EMERGENCY
900 KAR 6:060E

This emergency administrative regulation is being promulgated to establish the timetable for submission of Certificate of Need applications necessary for compliance with amendments to KRS 214B.450, which requires the cabinet to implement changes to the State Health Plan to develop Certificate of Need requirements for applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. Applicants must have a timetable within which to submit Level I psychiatric residential treatment facility and Level II psychiatric residential treatment facility certificate of need applications. An ordinary administrative regulation is not sufficient because the changes must be in place on October 13, 2010 when the amendments to KRS 216B.450 are effective. Failure to enact this administrative regulation on an emergency basis will compromise the Cabinet's ability to comply with the new requirements of KRS 216B.450 as applicants will not be able to submit Certificate of Need Applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. KRS 216B.450 allows the establishment of Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities to meet the treatment needs of children ages four (4) to twenty-one (21) who have an emotional disability, persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or development disability. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Emergency Amendment)

900 KAR 6:060E. 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)
EFFECTIVE: October 18, 2010
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 program. 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, Level I psychiatric residential treatment facility (Level 1 PRTF), Level II psychiatric residential treatment facility (Level II PRTF), cardiac catheterization, 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, 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: October 14, 2010
FILED WITH LRC: October 18, 2010 at 1 p.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: Carrie Banahan or Shane O'Donley, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's timetable for submission of certificate of need applications. The amendment to this administrative regulation will recognize the creation of two additional licensure categories pursuant to 902 KAR 20:400 titled Level I Psychiatric residential treatment facility and Level II Psychiatric residential treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, and 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetable for submission of certificate of need applications.

(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 216B.010, 216B.062, and 216B.990 by establishing the timetables for submission of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: This amendment will assign Certificate of Need applications to establish Level I Psychiatric Residential Treatment Facilities and Level II Psychiatric Residential Treatment Facilities to a specific CON application batching cycle.

(b) The necessity of the amendment to this administrative regulation: The Office of the Inspector General filed an administrative regulation which creates a new licensure category. Since this category of service is not exempt by statute from CON requirements, the Office of Health Policy must assign this facility category to an appropriate batching cycle schedule. This amendment accomplishes that requirement.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 216B.062, applications for certificates of need shall be submitted according to timetables estab-

lished by the cabinet by promulgation of administrative regulation, pursuant to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: Promulgation of this amended administrative regulation under KRS Chapter 13A shall establish an appropriate batching cycle to assure that applications for Level I Psychiatric Residential Treatment Facilities and Level II Psychiatric Residential Treatment Facilities will be eligible for consideration at set intervals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application to establish a Level I Psychiatric Residential Treatment Facility or a Level II Psychiatric Residential Treatment Facility.

(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: As the timetables set forth in the administrative regulation are currently established and operational, no new action will be required for regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the timetables set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish Level II psychiatric residential treatment facility in compliance with KRS Chapter 216B.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these timetables as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the timetables are already used as part of our normal operations so no additional funding will be 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 increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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 any revenue.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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 20:320E

This emergency administrative regulation is being promulgated as an amendment to the existing administrative regulation to establish minimum licensure requirements for the operation of Level II psychiatric residential treatment facilities. Level II psychiatric residential treatment facilities will offer specialty programs to treat children and adolescents who have a severe emotional disability as defined by KRS 200.503 in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or development disability. Residents of Level II psychiatric residential treatment facilities do not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital, and they have treatment needs that cannot be met in an ambulatory care setting, Level I psychiatric residential treatment facility, or other less restrictive environment. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation required by the passage of HB 231 during the 2010 Session of the General Assembly. Children with severe psychiatric disorders are now treated out-of-state because of a lack of options in Kentucky. However, with the passage of HB 231, children placed out-of-state may return home, and others who would have been placed out of state will now benefit from in-state options through the establishment of Level II psychiatric residential treatment facilities. Failure to enact this administrative regulation on an emergency basis will compromise the Cabinet's ability to comply with the requirements of HB 231 enacted by the 2010 General Assembly. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Amendment)

902 KAR 20:320E. <u>Level I and Level II</u> psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.990, 42 C.F.R. 441.156, 42 C.F.R. 483

STATUTORY AUTHORITY: KRS 216B.042, 216B.105,

216B.450-216B.459, 314.011(8), 314.042(8), 320.240(14)[,]

EFFECTIVE: October 18, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in Level I and Level II psychiatric residential treatment facilities.

Section 1. Definitions. (1) "BAMT" or "Blood Assay for Mycobacterium tuberculosis" means a diagnostic blood test that assesses for the presence of infection with M. tuberculosis. Results are reported as positive, negative, indeterminate, or borderline.

(2) "BAMT conversion" means a change in test result, on serial testing, from negative to positive.

(3) "Boosting" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TST) may restore the sensitivity. An initially small TST reaction size is followed by a substantial reaction size on a later test, and this increase in millimeters of indurations may be confused with a conversion or a recent M. tuberculosis infection. Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(4) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

(5)[~~(2) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.~~

~~(3)~~] "Direct-care staff" means residential or child-care workers who directly supervise residents.

(6) "Directly Observed Therapy" or "DOT" means an adherence-enhancing strategy in which a healthcare worker or other trained person watches a patient swallow each dose of medication. DOT is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI). DOT for treatment of LTBI is called Directly Observed Preventive Therapy (DOPT).

(7) "Emergency safety intervention" is defined by 42 C.F.R 483.352 as the use of restraint or seclusion as an immediate response to an emergency safety situation.

(8) "Emergency safety situation" is defined by 42 C.F.R. 483.352 as an unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(9)[~~(4)~~] "Freestanding" is defined by[~~in~~] KRS 216B.450(3).

(10)[~~(5)~~] "Governing body" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the facility is vested.

(11) "Home-like" is defined by KRS 216B.450(4).

(12) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection. The diameter of the firm area is measured transversely to the nearest millimeter to gauge the degree of reaction, and the result is recorded in millimeters. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection in a healthcare setting. A reaction of five (5) millimeters or more of induration may be significant in certain individuals, including HIV-infected persons, persons with immunosuppression, or recent contacts of persons with active TB disease.

(13) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease has manifested.

(14)[~~(6)~~] "Licensure agency" means the Cabinet for Health and Family Services, Office of Inspector General.

(15)[~~(7)~~] "Living unit" means:

(a) The area within a single building that is supplied by a Level I[~~the~~] facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(16)[~~(8)~~] "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(17)[~~(9)~~] "Mental health associate" means:

(a) An individual with a minimum of a bachelor's degree in a mental health related field; a registered nurse; or a licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or

(b) An individual with a high school diploma or an equivalence certificate and at least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(18)[~~(10)~~] "Mental health professional" is defined by[~~in~~] KRS 645.020(7).

(19)[~~(11)~~] "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(20)[~~(12)~~] "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) as a Level I facility or a Level II facility.

(21) "Qualified mental health personnel" is defined by KRS 215B.450(6).

(22) "Qualified mental health professional" is defined by KRS 216B.450(7).

(23)[~~(13)~~] "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(24) "Tuberculin Skin Test" or "TST" means a diagnostic aid for finding M. tuberculosis infection. A TST is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). TST results shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.

(25) "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities). The bacteria may attack any part of the body, but disease is most commonly found in the lungs (pulmonary TB). Pulmonary TB disease may be infectious; extra pulmonary disease (occurring at a body site outside the lungs) is not infectious, except in rare circumstances. If the only clinical finding is specific chest radiographic abnormalities, the condition is termed "inactive TB" and may be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or specific chest radiographic finding.

(26) "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected. A TST conversion is >10 mm increase in the size of the TST induration during a two (2) year period in:

(a) A health care worker with a documented negative (<10 mm) baseline two-step TST result; or

(b) A person who is not a health care worker with a negative (<10 mm) TST result within two (2) years.

(c) A TST conversion is presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

(27) "Two-step TST" or "two-step testing" means a series of two (2) TSTs administered seven (7) to twenty-one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including healthcare workers and residents of psychiatric residential treatment facilities to reduce the likelihood of mistak-

ing a boosted reaction for a new infection.

(29)[~~(14) "Special treatment procedures" means any procedure such as chemical restraint, mechanical restraint, personal restraint, or seclusion which may have abuse potential or be life threatening.~~

~~(15)~~] "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant profession[~~professional~~].

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a Level I or Level II PRTF shall complete and submit to the Office of Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) If an entity seeks to operate both a Level I and a Level II PRTF and is granted licensure to operate both levels, a separate license shall be issued for each level.

(3) The initial and annual fee for licensure as a Level I PRTF shall be $270.

(4)(a) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds or less shall be $270.

(b) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds to fifty (50) beds:

1. Shall be $270; and

2. A fee of ten (10) dollars shall be added to the minimum fee of $270 for each bed beyond the ninth bed.

Section 3. Location. [~~Applicability.~~](1)(a) A Level I psychiatric residential treatment facility shall be located in a freestanding structure.

(b) A Level II PRTF may be located:

1. In a separate part of a psychiatric hospital;

2. In a separate part of an acute care hospital;

3. In a completely detached building; or

4. On the campus of a Level I PRTF if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I PRTF.

(c) A licensed Level II PRTF shall not be licensed for more than fifty (50) beds.

(2) In accordance with KRS 216B.455(5) multiple Level I PRTFs may be located on a common campus if each is freestanding.

(3)(a)1. If a Level I or Level II psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF,[~~the following shall apply:~~

~~(a)~~] the residents of the Level I or Level II PRTF and the licensed facility with which it shares grounds shall not have any joint activities or interactions.

2. If a Level II PRTF is located on grounds shared by a Level I PRTF, the following shall apply:

a. The residents of the Level II PRTF and the Level I PRTF with which it shares grounds shall not have any joint activities or interactions, except for organized education activities, organized recreational activities, or group therapy for children with similar treatment needs;

b. Approval for therapeutic joint activities or interactions shall be documented in the resident's comprehensive treatment plan of care; and

c. The maximum age range for joint activities or interactions shall be no more than five (5) years for residents age six (6) to twenty-one (21), and no more than three (3) years for residents in Level II facilities age four (4) to five (5).

(b) Direct-care staff of the licensed facility with which the Level I or Level II PRTF shares grounds may provide relief, replacement, or substitute staff coverage to the PRTF; and

(c) For continuity of care, at least fifty (50) percent of direct care staff of the Level I or Level II PRTF shall be consistently and primarily assigned to the living unit.[~~employed by the PRTF.~~

~~(4) PRTFs that are located in the same structure or on a common campus may share joint activities and staff.~~]

Section 4.[~~3.~~] Licensure. (1) A Level I or Level II psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

(2) Pursuant to KRS 216B.455(3) and 216B.457(5) which require compliance with KRS 216B.105, no person shall operate a PRTF without first obtaining a license issued by the Office of Inspector General.

(3) Pursuant to KRS 216B.455(4) and 216B.457(6), a PRTF shall be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards.

Section 5.[~~4.~~] Governing Body for a Level I or Level II PRTF. A PRTF shall have a governing body with overall authority and responsibility for the facility's operation.

(1)(a) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(b) A Level I and a Level II PRTF that are part of the same multifacility system, and a Level II PRTF operated by a psychiatric hospital, may share the same governing body.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall describe the process for the following:

(a) Adopting policies and procedures;

(b) Providing sufficient funds, staff, equipment, supplies, and facilities to assure that the facility is capable of providing appropriate and adequate services to residents;

(c) Overseeing the system of financial management and accountability;

(d) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(e) Electing, appointing, or employing the clinical and administrative leadership personnel of the facility, and defining the qualifications, authority, responsibility, and function of those positions[~~; and~~

~~(f) Approving employment of mental health professional staff~~].

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) If a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 6.[~~5.~~] Level I or Level II PRTF Program Director. (1) A program director shall be responsible for the administrative management of the facility.

(2) A program director:

(a) Shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems;

(b) Shall have at least minimum qualifications of a master's degree or bachelor's degree in the human services field including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing; or

15. Other human service field related to working with families and children;

(c)1. With a master's degree shall have two (2) years of prior supervisory experience in a human services program; or

2. With a bachelor's degree shall have four (4) years of prior supervisory experience in a human services program; and

(d)1. Shall have three (3) professional references, two (2) personal references, and a criminal record check performed every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;[~~and~~]

2. Shall not have a crime conviction, or plea of guilty, pursuant to KRS 17.165 or a Class A felony; and

3. Shall be subject to the provisions of KRS 216B.457(12), which requires submission to a check of the central registry, and requires an employee to be removed from contact with a child under the conditions described in KRS 216B.457(12).

(3) A program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following, unless the PRTF is part of a health care system under common ownership and governance where such duties are assigned to, or are the responsibility of the program director's supervisor or other staff:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Assuring that sufficient, qualified, and appropriately supervised staff are on duty to meet the needs of the residents at all times;

(c) Approving purchases and payroll;

(d) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(e) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(f) Preparing reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(g) Maintaining a written manual that defines policies and procedures and is regularly revised and updated; and

(h) Assuring that all written facility policies, plans, and procedures are followed.

Section 7.[~~6.~~] Administration and Operation of a Level I or Level II PRTF. (1) A Level I or Level II PRTF shall have written documentation of the following:

(a) An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

(b) A service philosophy with clearly defined assumptions and values;

(c) Estimates of the clinical needs of the children and adolescents [~~in the area~~] served by the facility;

(d) The services provided by the facility in response to needs;

(e) The population served, including age groups and other relevant characteristics of the resident population;

(f) The intake or admission process, including how the initial contact is made with the resident and the family or significant others;

(g) The assessment and evaluation procedures provided by the facility;

(h) The methods used to deliver services to meet the identified clinical needs of the residents served;

(i) The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

(j) The methods used to create a home-like environment for all residents;

(k) The methods, means and linkages by which the facility involves [~~all~~] residents in community activities, organizations, and events;

(l) The treatment planning process and the periodic review of therapy;

(m) The discharge and aftercare planning processes;

(n) The facility's therapeutic programs;

(o) How professional services are provided by qualified, experienced personnel;

(p) How mental health professionals in Level I facilities and qualified mental health professionals in Level II facilities and direct-care staff in Level I or Level II facilities who have been assigned specific treatment responsibilities are qualified by training or experience and have demonstrated competence and[~~have appropriate clinical privileges~~]; or are supervised by a mental health professional or qualified mental health professional who is qualified by experience to supervise the treatment;

(q) How the facility is linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Community Based Services offices and facilities, [~~and~~] school systems in the facility's service area, and any other agency, organization, or facility deemed appropriate by the cabinet;

(r) The means by which the facility provides, or makes arrangements for the provision of:

1. Emergency services and crisis stabilization;

2. Discharge and aftercare planning that promotes continuity of care; and

3. Education and vocational services; and

(s) Services the facility provides to improve stability of care and reduce re-hospitalization including:

1. How psychiatric and nursing coverage is provided to assure the continuous ability to manage and administer medications in crisis situations except for those that may only be administered by a physician; and

2. How direct-care staffing with supervision is provided to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint, and the staff training necessary to implement them.

(2) The documentation shall be:

(a) Made available to each mental health professional in a Level I PRTF or qualified mental health professional in a Level II PRTF and to the program director; and

(b) Reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(3) Professional staff for a Level I or Level II PRTF.

(a) A Level I PRTF shall:

1. Employ a sufficient number of mental health professionals in a Level I PRTF to meet the treatment needs of residents and the goals and objectives of the facility; and

2. Meet the following requirements with regard to professional staffing:

a.(i) A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed or contracted to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation.

(ii) If a facility has residents ages twelve (12) and under, the licensed psychiatrist shall be board-eligible or board-certified in child psychiatry.

(iii) The psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly, which includes meeting with each resident at least one (1) time each week.

b. A Level I PRTF shall employ at least one (1) full-time mental health professional.

c. A mental health professional in a Level I PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times.

d. A psychiatrist shall be available on at least an on-call basis at all times.

(b) A Level II PRTF shall:

1. Employ or contract with a sufficient number of qualified mental health professionals in a Level II PRTF to meet the treatment needs of residents and the goals and objectives of the facility;

2. Ensure that at least one (1) qualified mental health profes-

sional in a Level II PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times; and

3. Meet the following requirements with regard to professional staff pursuant to KRS 216B.457(9):

a. A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;

b. If a Level II facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist;

c. The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly, which includes meeting with each resident at least one (1) time each week; and

d. A licensed psychiatrist shall be available on at least an on-call basis at all times.

(c) Clinical director. The administration of the facility[~~governing body~~] shall designate one (1) full-time:

1. Mental health professional as clinical director for a Level I[~~the~~] PRTF; or

2. Qualified mental health professional as the clinical director for a Level II PRTF.

a.[~~1.~~] In addition to the requirements related to his or her profession, the clinical director shall have at least two (2) years of clinical experience in a mental health setting that serves children or adolescents with emotional problems.

b.[~~2.~~] The administration of the facility[~~governing body~~] shall define the authority and duties of the clinical director.

c.[~~3.~~] An individual may serve as both the clinical director and the program director if the qualifications of both positions are met.

d.[~~4.~~] The clinical director shall be responsible for:

(i)[~~a.~~] The maintenance of the facility's therapeutic milieu; and

(ii)[~~b.~~] Assuring that treatment plans developed in accordance with Section 12[~~11~~](3) of this administrative regulation are implemented.

e.(i)[~~5.~~] A full-time mental health professional may be designated as clinical director for more than one (1) Level I PRTF if the Level I PRTFs are located on a common campus.

(ii) A full-time qualified mental health professional may be designated as clinical director of a PRTF operating both a Level I and a Level II PRTF located on a common campus.

(4) Direct-care staff for a Level I PRTF.

(a) A Level I PRTF shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b)1. Level I Direct-care staff shall have at least a high school diploma or equivalency; and

2. Complete[~~two (2) years experience in a program in the mental health field serving children or adolescents.~~

~~2. Completion of~~] a forty (40) hour training curriculum meeting the requirements of subsection (6)[~~(5)~~](d) of this section within one (1) month of employment[~~may be substituted for experience, except that direct-care staff so qualified shall not be given clinical privileges in their first year of employment~~].

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan for a Level I PRTF shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for a PRTF at all times during normal waking hours when residents are not in school;

2. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents during normal waking hours when residents are not in school;

3.a. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep; and

b. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on the grounds of the PRTF to assist with emergencies or problems which might arise;

4. If a mental health professional is directly involved in an activity with a group of residents, he or she may meet the requirement for a direct-care staff member; and

5. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) Written policies and procedures approved by the Level I PRTF's governing body shall:

1.[~~Specify the clinical privileges, if any, of each member of the direct-care staff;~~

~~2.~~] Provide for the supervision of the direct-care staff; and

2.[~~3.~~] Describe the responsibilities of direct-care staff in relation to professional staff.

(5) Direct-care staff for a Level II PRTF.

(a) A Level II PRTF shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Level II direct-care staff shall:

1. Have at least a high school diploma; and

2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(d) of this section within one (1) month of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, a Level II PRTF shall prepare a written staffing plan pursuant to KRS 216B.457(10)(a) that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria.

(d) Pursuant to KRS 216B.457(10)(a), the written staffing plan submitted by a Level II PRTF to the Office of Inspector General shall include the following:

1. Specification of the direct care staffing per resident ratio that the facility shall adhere to during waking hours and during sleeping hours;

2. Delineation of the number of direct care staff per resident, including the types of staff and the mix and qualifications of qualified mental health professionals and qualified mental health personnel, that shall provide direct care and will comprise the facility's per patient staffing ratio;

3. Specification of appropriate qualifications for individuals included in the per resident staffing ratio by job description, education, training, and experience;

4. Provision for ensuring compliance with the written staffing plan, and specification of the circumstances under which the facility may deviate from the per resident staffing ratio due to patient emergencies, changes in patient acuity, or changes in resident census; and

5. Submission of the written staffing plan to the Office of Inspector General for approval as part of the facility's application for initial licensure.

(e)1. Pursuant to KRS 216B.457(10)(a), a Level II PRTF shall comply with its cabinet-approved written staffing plan.

2. If the facility desires to change its approved per patient staffing ratio, it shall submit a revised plan to the Office of Inspector General and have the plan approved prior to implementation of the change.

(6) Staff development.

(a) Level I and Level II PRTF staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.

(b) Level I and Level II PRTF[~~full-time~~] professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with forty (40) hours per year of in-service training

(c)[~~Part-time staff shall have at least twenty-four (24) hours of annual training specific to tasks to be performed.~~

~~(d)~~] Each Level I and Level II PRTF staff member working directly with residents shall receive annual training in the following areas:

1. Child and adolescent growth and development;

2. Emergency and safety procedures;

3. Behavior management, including de-escalation training;[~~and~~]

4. Detection and reporting of child abuse or neglect.

5. Physical management procedures and techniques;

6. First aid;

7. Cardiopulmonary resuscitation;

8. Infection control procedures; and

9. Training specific to the specialized nature of the facility.

(6) Employment practices in a Level I and Level II PRTF.

(a) A Level I and Level II PRTF shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The Level I or Level II PRTF's personnel policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The Level I or Level II PRTF's personnel policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The Level I or Level II PRTF shall maintain job descriptions that:

1. Specify[~~Are approved by the governing body for all positions specifying~~] the qualifications, duties, and supervisory relationship of the position;

2. Accurately reflect the actual job situation; and

3. Are revised if a change is made in the required qualifications, duties, supervision, or any other major job-related factor.[~~; and~~

~~4. Provide the salary range for each position.~~]

(e) The Level I or Level II PRTF shall provide a personnel orientation to all new employees.

(f)1. The Level I or Level II PRTF's personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.

2. The Level I or Level II PRTF's facility administration[~~governing body~~] shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.

(g)[~~b. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.~~

~~2.a. Provide a personnel orientation to all new employees.~~

~~b. The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.~~

~~c. The governing body shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.~~

~~(g) Information on the following shall be included in the personnel policies and procedures:~~

~~1. Employee benefits;~~

~~2. Recruitment;~~

~~3. Promotion;~~

~~4. Training and staff development;~~

~~5. Employee grievances;~~

~~6. Safety and employee injuries;~~

~~7. Relationships with employee organizations;~~

~~8. Disciplinary systems;~~

~~9. Suspension and termination mechanisms;~~

~~10. Rules of conduct;~~

~~11. Lines of authority;~~

~~12. Performance appraisals;~~

~~13. Wages, hours and salary administration; and~~

~~14. Equal employment opportunity and, if required, affirmative action policies.~~

~~(h)~~] The Level I or Level II PRTF's personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h)1.[~~(i)~~] The Level I or Level II PRTF's personnel policies and procedures shall require a criminal record check through the Administrative Office of the Courts or the Kentucky State Police for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

2. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer in a Level I or Level II PRTF.

3. Pursuant to KRS 216B.216.457(12)(a), any employee or volunteer in a Level I or Level II PRTF who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.

4. Pursuant to KRS 216B.457(12)(b), an employee or volunteer in a Level I or Level II PRTF under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.

5. Pursuant to KRS 216B.457(12)(c), the employee or volunteer in a Level I or Level II PRTF shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.

6. Pursuant to KRS 216B.457(12)(d), each employee or volunteer in a Level I or Level II PRTF shall submit to a check of the central registry established under 922 KAR 1:470.

7. A Level I or Level II PRTF shall not employ or allow any person to volunteer if that individual is listed on the central registry.

8. Pursuant to KRS 216B.457(12)(e), any employee or volunteer removed from contact with a child, may be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.

(i)[~~(j)~~] The Level I or Level II PRTF's personnel policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j)[~~(k)~~] A Level I or Level II PRTF's personnel record shall be kept on each staff member and shall contain the following items:

1. Name and address[~~Application for employment~~];

2. [~~Written references and a record of verbal references;~~

~~3.~~]Verification of all training and experience and of licensure, certification, registration, or renewals;

3. Verification of submission to the background checks required by paragraph (h) of this subsection;

4.[~~Wage and salary information, including all adjustments;~~

~~5.~~] Performance appraisals;

5.[~~6. Counseling actions;~~

~~7. Disciplinary actions;~~

~~8. Commendations;~~

~~9.~~] Employee incident reports; and

6.[~~10.~~] Record of health exams related to employment, including compliance with the tuberculosis testing requirements of Section 24 of this administrative regulation.

(k)[~~(l)~~] The Level I or Level II PRTF's personnel policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l)[~~(m)~~] Performance appraisals shall relate job description and job performance and shall be written.[~~The criteria used to evaluate job performance shall be objective.~~]

Section 8.[~~7.~~] Resident Rights. (1) A Level I or Level II PRTF shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the Level I or Level II PRTF's governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, a Level or Level II PRTF shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's right to access treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's right to participate in planning for treatment;

(f) The nature of care, procedures, and treatment that the resident shall receive;

(g) The right to informed consent related to the risks, side effects, and benefits of all medications and treatment procedures used; [~~and~~]

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice; and

(i) The right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

(4) The rights of residents in a Level I or Level II PRTF shall be written in language which is understandable to the resident, his or her parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning Level I or Level II PRTF resident rights shall assure and protect the resident's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy are limited, the resident and his or her parent, guardian, or custodian shall receive a full explanation from the Level I or Level II PRTF. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure anonymously and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the Level I or Level II PRTF's governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his or her parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, videotapes, monitors, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his or her record maintained by the Level I or Level II facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10)(a) A Level I or Level II resident shall be allowed to work for the facility only under the following conditions:

1. The work is part of the individual treatment plan;

2. The work is performed voluntarily;

3. The patient receives wages commensurate with the economic value of the work; and

4. The work project complies with applicable law and administrative regulation; and

(b) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) A Level I or Level II PRTF's Written policy developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) A Level I or Level II PRTF shall prohibit all cruel and unusual disciplinary measures including the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding, or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit Level I or Level II PRTF residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14)(a) Written rules of Level I or Level II PRTF resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body.

(b) Residents shall participate in the development of the rules to a reasonable and appropriate extent.

(c) These rules shall be based on generally acceptable behavior for the resident population served.

(15) The application of disciplinary measures in a Level I or Level II PRTF shall relate to the violation of established rules.

Section 9.[~~8.~~] Resident Records. (1) A Level I or Level II PRTF shall:

(a) Have written policies concerning resident records approved by the governing body; and

(b) Maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(2) The Level I or Level II PRTF resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his or her family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, if applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning;[~~and~~]

5. Immunization status; and

6. Tuberculosis testing required by Sections 19 and 20 of this administrative regulation.

(3) The Level I or Level II PRTF resident record shall also include:

(a) Physician's notes which shall include an entry made at least

weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except if the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the:

1. Mental health professional who provided the service in a Level I PRTF; or

2. Qualified mental health professional who provided the service in a Level II PRTF.

(c)1. Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the resident.

2. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly.

3. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(4) A Level I or Level II PRTF shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 10.[~~9.~~] Quality Assurance. (1) A Level I or Level II PRTF shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) A Level I or Level II PRTF shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings.

(3) A Level I or Level II PRTF shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record shall[~~should~~] be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 11.[~~10.~~] Admission Criteria. (1) A Level I or Level II PRTF shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission in a Level I or Level II PRTF;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his or her parents, guardians, custodians, or the placing agency.

(3) Pursuant to 42 C.F.R. 483.356, at admission, a facility shall:

(a) Inform both the incoming resident and the resident's parent or legal guardian of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;

(b) Communicate its restraint and seclusion policy in a language that the resident, or his or her parent or legal guardian understands (including American Sign Language, if appropriate) and if necessary, the facility shall provide interpreters or translators;

(c) Obtain an acknowledgment, in writing, from the resident's parent or legal guardian that he or she has been informed of the facility's policy on the use of restraint or seclusion during an emergency safety situation. Staff shall file this acknowledgment in the resident's record; and

(d) Provide a copy of the facility policy to the resident's parent or legal guardian. The facility's policy shall provide contact information, including the phone number and mailing address for Kentucky Protection and Advocacy.

(4) Age limits.

[~~(3)~~](a) Residents admitted to a Level I PRTF shall have obtained age six (6), but not attained age eighteen (18).

(b) Residents in a Level I PRTF may remain in care until age twenty-one (21) if admitted by their 18th birthday.

(c) Pursuant to KRS 216B.450(5)(b), a Level II PRTF may provide inpatient psychiatric residential treatment and habilitation to persons who are age four (4) to twenty-one (21) years.

(d)1. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit for residents six (6) years of age and older.

2. If a Level II PRTF admits residents who are four (4) or five (5) years of age, the age range shall not be more than three (3) years in the living unit.

(5)[~~(4)~~] Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted to a Level I PRTF.

(6)(a) Except for paragraph (b) of this subsection, a Level II PRTF shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services pursuant to KRS 216B.457(2).

(b) A Level II PRTF shall refuse to admit a patient if the admission exceeds the facility's licensed bed capacity.

Section 12[~~11.~~] Resident Management. (1) Intake.

(a) A Level I and Level II PRTF shall have written policies and procedures approved by the facility administration[~~governing body~~] for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(c) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes at least physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) An initial health screening for illness, injury, and communicable disease or other immediate needs shall be conducted within twenty-four (24) hours after admission by a nurse.

(c) A physician, nurse practitioner, or physician's assistant shall conduct a physical examination of each resident within fourteen (14) days after admission. Communication to schedule the physical examination of each resident shall be initiated within twenty-four (24) hours after admission. The physical examination shall include at least evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(d) If the resident has had a complete physical examination by a qualified physician, nurse practitioner, or physician's assistant within the previous three (3) months which includes the requirements of paragraph (c) of this subsection of this section and if the facility obtains complete copies of the record, the physician, nurse practitioner, or physician's assistant may determine after reviewing the records and assessing the resident's physical health that a complete physical examination is not required. If that determination is made, the examination performed in the previous three (3) months may be used to meet the requirement for a physical examination in paragraph (c) of this section.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. If indicated, psychological assessments, including intellectual, projective, and personality testing;

5. If indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age fourteen (14)[~~sixteen (16)~~] and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with an attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) If appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Level I treatment plans.

(a)1. Within seventy-two (72) hours following admission, a mental health professional shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status.

2. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A comprehensive[~~master~~] treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156 within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan of care shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan of care shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan of care shall specify criteria to be met for termination of treatment.

4. The treatment plan of care shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his or her treatment plan of care, and the participation shall be documented in the resident's record.

6.a. A specific plan for involving the resident's family or significant others shall be included in the treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive[~~master~~] treatment plan.

c. The comprehensive[~~master~~] treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

7. The treatment plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least within, thirty (30) days following the first ten (10) days of treatment and every thirty (30)[~~sixty (60)~~] days thereafter.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The comprehensive[~~master~~] treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(4) Level II PRTF treatment plans.

(a)1. Pursuant to KRS 216B.457(13), a Level II PRTF shall develop and implement an initial treatment plan of care for each resident.

2. The initial plan of care shall be:

a. Based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services; and

b. Completed within seventy-two (72) hours of admission.

(b) Appropriate therapeutic efforts shall begin before a comprehensive treatment plan of care is finalized.

(c)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156.

2. Pursuant to KRS 216B.457(14), the comprehensive treatment plan of care shall be:

a. Based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services; and

b. Completed within ten (10) calendar days of admission.

3. The comprehensive treatment plan of care shall contain specific and measurable goals for the resident to achieve.

4. The comprehensive treatment plan of care shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

5. The resident shall participate to the maximum extent feasible in the development of his or her treatment plan of care, and the participation shall be documented in the resident's record.

6.a. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan.

c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

(d) Pursuant to KRS 216B.457(15), the comprehensive treatment plan of care shall be reviewed at least every thirty (30) days following the first ten (10) days of treatment and shall include the following documentation:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian or conservator;

2. An assessment of progress toward each treatment goal and objective with revisions as indicated; and

3. A statement of justification for the level of services needed, including suitability for treatment in a less-restrictive environment and continued services.

(5) Level I and Level II PRTF progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, if available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his or her treatment plan shall be regularly recorded in the resident record.

(6)[~~(5)~~] Discharge planning. A Level I and Level II PRTF shall have written policies and procedures for discharge of residents.

(a)1. Discharge planning shall begin at admission and be documented in the resident's record.

2. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan.

3. This plan shall be maintained in the resident's record and reviewed and updated with the comprehensive[~~master~~] treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for any aftercare service, and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A Level I facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency copies of the resident's records and discharge summary; and

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that the placement reasonably meets the needs of the resident.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

Section 13.[~~12.~~] Services. A Level I and Level II PRTF shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident. Services shall include the opportunity for the resident to participate in community activities, organizations and events and shall provide a normalized environment for the resident.

(1) Level I and Level II mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 12[~~11~~] of this administrative regulation.

(b) The mental health services available through the Level I or Level II PRTF shall include the services listed below. These mental health services shall be provided by staff of the Level I or Level II PRTF:

1. a. Case coordination services to assure the full integration of all services provided to each resident.

b. Case coordination activities shall include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2.a. Planned on-site[~~verbal~~] therapies including[~~formal~~] individual, family, and group therapies as indicated by the comprehensive treatment plan.

b. These therapies shall include psychotherapy, interventions, or[~~and other~~] face-to-face[~~verbal~~] contacts, which may be made verbally or using assistive communication, between staff and the resident[~~which are planned~~] to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit.

c.[~~Verbal~~] Contacts that are incidental to other activities are excluded from this service.

3.a. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself or herself, and to function effectively in community settings.

b. Task and skill training activities shall include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Level I and Level II physical health services.

(a) The physical health services available through the Level I or Level II PRTF facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 12[~~11~~] of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education; and

6. An ongoing immunization program.

(b) If physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(c) A Level I or Level II PRTF shall not admit a resident who has a communicable disease or acute illness requiring treatment in an acute care inpatient setting

(3) Level I and Level II dietary services.

(a) A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Level I and Level II emergency services.

(a) A Level I or Level II PRTF shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, emergency safety intervention, elopement, or death.

(b)[~~The facility shall provide or arrange for the training of all direct care and professional staff in first aid and CPR.~~

~~(c)~~]1. All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

2. The plan shall be posted.

3. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building.

4. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff if a psychiatric, medical, or dental emergency of a resident occurs that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Level I and Level II pharmacy services. A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a)1. Medications shall be administered by a registered nurse, physician, or dentist, except if administered by a licensed practical nurse, certified medication aide, or direct care staff under the supervision of a registered nurse.

2. Direct care staff who administer medications shall have successfully completed a medicine administration course approved by the Kentucky Board of Nursing;

(b) Medications shall not be given without a written order signed by a physician, or dentist if applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [~~or~~] therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized by KRS 311.858. Telephone orders for medications shall be given only to licensed nurses or a pharmacist and signed by a[~~the~~] physician, dentist, advanced registered nurse practitioner,[~~or~~] therapeutically-certified optometrist, or physician assistant within seventy-two (72)[~~twenty-four (24)~~] hours from the time the order is given;

(c)[~~Psychotropic~~] Medications shall be prescribed only when clinically indicated[~~as one (1) facet of a program of therapy~~]. The facility shall ensure that no[~~stimulant or psychotropic~~] medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only

when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs shall be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Level I and Level II education and vocational services.

(a) Educational and vocational services available through a PRTF shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided by:

a. The facility;

b. The local school district in which the facility is located; or

c. A nonpublic school program which is specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program shall be specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. Education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the PRTF. If Level II facility beds are located in a separate part of a psychiatric or acute care hospital, the Level II residents shall not be educated in the same classroom as children or youth who are patients of the hospital.

(b) If the education services are not provided directly by the facility, there shall be a written plan for the provision of education services. The education provider shall be a state education department-approved program. The written plan shall, at a minimum, address:

1. Qualifications of staff providing educational services;

2. Participation of educational and vocational staff in the plan for the provision of education services[~~treatment planning process~~];

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's comprehensive[~~master~~] treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(e) The facility shall ensure that education services are developed and implemented with input from the child's education staff in conjunction with the comprehensive[~~master~~] treatment plan and meet the following requirements:

1. Each resident's comprehensive[~~master~~] treatment plan shall include formal academic goals for remediation and continuing education.

2.a. Each resident with a disability who is eligible for special education services[~~to the handicapped~~] shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized education[~~treatment~~] plan developed by the local school district.

b. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate.

c. The program director or designee shall request an invitation to attend all individualized education[~~treatment~~] plan or Admission and Release Committee meetings.

d. If allowed, the program director or designee shall attend all individualized education[~~treatment~~] plan or Admission and Release Committee meetings.

3. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 U.S.C. 1400 shall be developed with the opportunity for input from both parties.

(f)1. The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan.

2. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Level I or Level II PRTF activity services.

(a) A daily schedule of planned recreational activities shall be prepared for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities which may include[~~including~~] physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community if appropriate; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(c) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. A Level I or Level II PRTF shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 14. Use of Emergency Safety Interventions in a Level I or Level II PRTF. (1) Pursuant to 42 C.F.R. 483.356(a)(3), restraint or seclusion shall not result in harm or injury to the resident and shall be used only:

(a) To ensure the safety of the resident or others during an emergency safety situation; and

(b) Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.

[~~13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion which may have abuse potential or be life-threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself, herself, or others.~~]

(2)(a) The use of mechanical restraint shall be prohibited in a Level I or Level II PRTF.

(b) Residents of a Level I or Level II PRTF shall not be held in

a prone or supine position during restraint.

(3) Emergency safety interventions[~~Special treatment procedures~~] shall not be used as a means of coercion, punishment,[~~or as a~~] convenience, or retaliation[~~of staff~~].

(4) Orders for restraint or seclusion shall be:

(a) By a physician or other licensed practioner [~~Special treatment procedures may only be:~~

~~(a) Ordered by a trained, clinically privileged staff person~~] acting within his or her scope of practice who is trained in the use of emergency safety interventions; [~~and~~]

(b) Carried out by trained staff;

(c) If the residents' treatment team physician is available, only he or she shall order restraint or seclusion; and

(d) A physician or other licensed practioner acting within his or her scope of practice who is trained in the use of emergency safety interventions shall order the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff.

(5) A Level I and Level II PRTF shall have a written plan approved by the governing body for the use of emergency safety intervention[~~special treatment procedures~~] which at a minimum shall meet the following requirements:

(a) Any use of an emergency safety interventions[~~special treatment procedures~~] shall require clinical justification;

(b) A rationale and the clinical indications for the use of an emergency safety intervention[~~special treatment procedures~~] shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective;

(d) The plan shall specify the length of time the emergency safety intervention[~~special treatment procedure~~] may be utilized; and

(e) The plan shall specify when continued or repeated emergency safety interventions[~~special treatment procedures~~] shall trigger multidisciplinary team review.

(6) If an emergency safety situation requires restraint or seclusion and a practitioner authorized to order restraint or seclusion is not available in a Level I or Level II PRTF, a verbal order for restraint and seclusion may be obtained and carried out under the following conditions:

(a) The verbal order shall be given by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice and trained in the use of emergency safety interventions;

(b) The verbal order shall be received by a registered nurse or licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice;

(c) The physician or ordering practitioner shall be immediately available, at least by telephone for consultation during the time that restraint or seclusion is being carried out; and

(d) The verbal order shall be countersigned by the physician or ordering practitioner within seven (7) days of date that the order was given, and included in the resident's record.

(7)[~~For a nonemergency situation, restraint or seclusion may be carried out only after being ordered by:~~

~~(a) A resident's treating physician; or~~

~~(b) A practitioner acting within his or her scope of practice, if the resident's treating physician is not available. The practitioner shall:~~

~~1. Contact the resident's treating physician as soon as possible and inform him or her of the order for restraint or seclusion; and~~

~~2. Annotate the resident's record with date and time of the contact with the treating physician.~~

~~(8)~~] An order for restraint or seclusion shall not exceed:

(a) The duration of the emergency safety situation;

(b) Four (4) hours for a resident eighteen (18) to twenty-one (21) years of age;

(c) Two (2) hours for a resident nine (9) to seventeen (17) years of age; or

(d) One (1) hour for a resident seven (7) to eight (8)[~~under nine (9)~~] years of age; or

(e) Thirty (30) minutes for a child four (4) to six (6) years of age.

(8)[~~(9)~~] If an emergency safety situation exists beyond the time limit for the use of restraint or seclusion, a new order for restraint or seclusion shall be obtained.

(9)[~~(10)~~] A resident that is placed in restraint or seclusion shall receive a face-to-face evaluation to determine physical and psychological well being. The evaluation shall[~~be conducted~~]:

(a) Be conducted by a licensed practitioner who is acting within his or her scope of practice and trained in the use of emergency safety intervention;

(b) Include the resident's physical and psychological status, resident's behavior, appropriateness of the intervention measures, and any complications resulting from the intervention[~~authorized by the facility and acting within his or her scope of practice~~]; and

(c) Be conducted[~~(b)~~] Within one (1) hour of restraint or seclusion being initiated.

(11) Each order for restraint or seclusion shall include:

(a) The name of the ordering physician or other licensed practitioner, acting within his or her scope of practice and trained in the use of emergency safety interventions;

(b) The date and time the order was obtained; and

(c) The emergency safety intervention ordered, including the length of time for which the physician or other licensed practitioner authorized its use.

(12)(a) Staff shall document the emergency safety intervention in the resident's record.

(b) The documentation shall be completed by the end of the shift in which the intervention occurs.

(c)If the intervention does not end during the shift in which it began, documentation shall be completed during the shift in which it ends. Documentation shall include:

1. Each order for restraint or seclusion as described in subsection (11) of this section;

2. The time the emergency safety intervention actually began and ended;

3. The time and results of the evaluation required by subsection (9) of this section;

4. The emergency safety situation that required the resident to be restrained or put in seclusion; or

5. The name of staff involved in the emergency safety intervention.

(13)[~~(11)~~] Staff who implement emergency safety interventions[~~special treatment~~] procedures shall:

(a) Have documented training in the proper use of the procedure used;

(b) Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and

(c) Receive annual training and recertification in crisis intervention and behavior management.

(14)[~~(12)~~] Staff authorized by a Level I or Level II PRTF shall:

(a) Be constantly, physically present with a resident being restrained;

(b) Monitor the physical and psychological well being of a resident being restrained, and monitor the safe use of restraint throughout the duration of the emergency safety intervention; and

(c) Document observations of, and actions taken for, a resident being restrained.

(15) Immediately after an incident of restraint or seclusion[~~(13) After a restraint is removed from a resident~~], a physician or licensed practitioner[~~that is authorized by a PRTF and~~] acting within his or her scope of practice and trained in the use of emergency safety interventions shall conduct a face-to-face evaluation of the resident's physical and psychological well-being.

(16)[~~(14)~~] Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

(17)[~~(15)~~] Staff authorized by a Level I or Level II PRTF shall:

(a) Monitor the physical and psychological well being of the resident;

(b) Ensure that a resident in seclusion is provided:

1. Regular meals;

2. Hydration;

3. Bathing; and

4. Use of the toilet; and

(c) Document observations of, and actions taken for, a resident

in restraint every fifteen (15) minutes.

(18)[~~(16)~~] A procedure shall not be used at any time in a manner that causes undue physical discomfort, harm, or pain to a resident.

(19)(a) A Level I or Level II PRTF shall notify the parent, guardian, or custodian of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.

(b) The facility shall document in the resident's record that the parent, guardian, or custodian has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

(20)(a) Within twenty-four (24) hours after use of restraint or seclusion, staff involved in an emergency safety intervention and the resident shall have a face-to-face discussion.

(b) The discussion shall include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the resident. The discussion may include other staff and the resident's parent, guardian, or custodian.

(21) Within twenty-four (24) hours after the use of restraint or seclusion, all staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes a review and discussion of:

(a) The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;

(b) Alternative techniques that might have prevented the use of the restraint or seclusion;

(c) The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and

(d) The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.

(22)[~~(17)~~] A Level I or Level II PRTF shall not use extraordinary risk procedures, including[~~, but not limited to,~~] experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(23)[~~(18)~~] Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by the child's psychiatrist addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

(24)[~~(19)~~] The clinical director or designee shall review all uses of emergency safety interventions[~~special treatment procedures~~] on a daily basis. The daily review shall include an evaluation for the possibility of unusual or unwarranted patterns of use.

Section 15.[~~14.~~] Housekeeping Services. (1) A Level I and Level II PRTF shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by a Level I or Level II PRTF or through contractual agreement.

(3) Pest control shall be provided by a Level I or Level II PRTF or through contractual agreement.

Section 16.[~~15.~~] Infection Control. (1) Because infections acquired in a Level I or Level II PRTF or brought into a Level I or Level II PRTF from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) A Level I or Level II PRTF shall document that in-service education in infection prevention and control is provided to all services and program components.

Section 18. Admission of Residents under Treatment for Pulmonary Tuberculosis Disease. (1) A Level I or Level II PRTF shall not admit a person under medical treatment for pulmonary tuberculosis disease unless the person is declared noninfectious by a licensed physician in conjunction with the local or state health department.

(2) Documentation of noninfectious status shall include:

(a) Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

(b) Documentation of clinical improvement on therapy;

(c) Three (3) consecutive sputum smears negative for acid-fast bacilli within the one (1) month period prior to admission; or

(d) Three (3) negative sputum cultures for TB.

Section 19. Tuberculin Skin Tests or BAMTs of Residents. (1) For residents entering a facility, a TST or BAMT shall not be required if one (1) of the following is documented:

(a) A previously documented TST has shown ten (10) or more millimeters of induration;

(b) A previously documented TST has shown five (5) or more millimeters of induration for a resident who has medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) The resident is currently receiving or has completed treatment of LTBI with nine (9) months of ionized or four (4) months of rifampin, or has completed a course of multiple-drug therapy for active TB disease; or

(e) The resident can document that he or she has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at a medical facility.

(2)(a) If a resident does not meet the criteria of subsection (1) of this section, a TST or a BAMT shall be required upon admission to the Level I or Level II facility.

(b)1. A TST is preferred for residents less than five (5) years of age.

2. A TST result of five (5) or more millimeters of induration may be positive for those residents who have medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive.

3. For a resident without medical reasons as identified in paragraph 2. of this subsection whose initial TST shows less than ten (10) millimeters of induration, two-step TSTs shall be required for:

a. A resident age fourteen (14) years and older; or

b. A resident expected to stay longer than twelve (12) months unless the resident is able to document that he or she has had a TST within one (1) year prior to initial testing upon admission to the facility.

(3)(a) The TST result of each resident shall be documented

through recording of the date and millimeters of induration of the most recent skin test in the medical record.

(b) The medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "TST Positive" for each resident with a reaction of ten (10) or more millimeters of induration and for each resident with a reaction of five (5) or more millimeters of induration who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive.

(4)(a) If performed and the result is positive or negative, only one (1) BAMT result shall be required on admission.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(c) If a resident has a positive BAMT, the medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "BAMT Positive."

Section 20. Medical Evaluations and Chest X-rays of Residents. (1) A resident shall receive a medical evaluation, including an HIV test, if the resident is found at the time of admission to have a:

(a) TST of ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive; or

(c) Positive BAMT.

(d) A chest x-ray shall be performed unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease.

(2)(a) A residents with no clinical evidence of active TB disease upon evaluation by a licensed physician and a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A resident who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements in Section 21 of this administrative regulation.

(3) A resident with an abnormal chest x-ray, consistent with TB disease:

(a) Shall be evaluated for active tuberculosis disease; and

(b) If the resident is diagnosed with active tuberculosis disease, transferred to a facility with an airborne infection isolation (AII) room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 21. Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, or chest pain, if the resident has a:

(a) TST result with ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion.

(2) If pulmonary symptoms, including cough, sputum production, or chest pain, develop and persist for three (3) weeks or longer, the resident shall have a medical evaluation, a chest x-ray shall be taken, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an AII room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 22. Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents Longer than One (1) Year. (1) Annual testing shall be required on or before the anniversary of the resident's last TST or BAMT.

(2) A TST shall be preferred for residents aged less than five (5) years.

(3) If pulmonary symptoms develop and persist for three (3) weeks or more:

(a) The resident shall have a medical evaluation;

(b) The tuberculin skin test shall be repeated; and

(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear; and

(d) A chest x-ray shall be taken.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an AII room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 23. Tuberculin Skin Tests or BAMTs for Staff. (1) The TST or BAMT status of all PRTF facility staff members who have direct contact with residents shall be documented in the employee's health record.

(2) A TST or BAMT shall be initiated on each new staff member who has direct contact with residents before or during the first week of employment, and the results shall be documented in the employee's health record within the first month of employment.

(3) A TST or BAMT shall not be required at the time of initial employment if the employee documents one of the following:

(a) A prior TST of ten (10) or more millimeters of induration;

(b) A prior TST of five (5) or more millimeters of induration if the employee has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion; or

(f) The employee is currently receiving or has completed treatment for LTBI.

(4)(a) If performed and the result is positive or negative, one (1) BAMT test result shall be required on initial employment.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(5) A TST result of five (5) or more millimeters of induration may be positive for a new employee who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive.

(6) A two-step TST shall be required for a new employee who does not have a medical reason as described in subsection (5) of this section and whose initial TST shows less than ten (10) millimeters of induration, unless the individual documents that he or she has had a TST within one (1) year prior to his or her current employment.

(e) A staff member who has never had a TST of ten (10) or more millimeters induration or a positive BAMT shall have a TST or BAMT annually on or before the anniversary of his or her last TST or BAMT.

Section 24. Medical Evaluations and Chest X-rays and Monitoring of Staff with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a staff member who has direct contact with residents shall have a medical evaluation, including a HIV test, if the staff member is found to have a:

(a) TST of ten (10) or more millimeters induration

(b) TST result of five (5) or more millimeters of induration if the staff member has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion,.

(f) A chest x-ray shall be performed unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis disease.

(2)(a) A staff member with a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A staff member who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the

requirements in Section 27 of this administrative regulation.

(3)(a) A staff member with an abnormal chest x-ray shall be evaluated for active tuberculosis disease, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(b) A staff member shall remain off work until cleared as being noninfectious for TB by a licensed physician.

(c) A staff member whose medical evaluation and laboratory tests are suspect for active tuberculosis disease shall be isolated (e.g. in an AII room or in home isolation) and started on four (4) drug antituberculosis treatment that is administered by DOT.

(4)(a) A staff member under treatment for pulmonary tuberculosis disease may return to work in the facility after being declared noninfectious by a licensed physician in conjunction with the local or state health department.

(b) Documentation of noninfectious status shall include:

1. Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

2. Documentation of clinical improvement on therapy;

3. Three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to admission; or

4. Three (3) negative sputum cultures for TB.

Section 25. Responsibility for Screening and Monitoring Requirements. (1) The administrator of the facility shall be responsible for ensuring that all TSTs, BAMTs, chest x-rays and sputum samples submissions are done in accordance with Sections 18 through 27 of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from the local health department.

(3)(a) Dates of all TSTs or BAMTs and results, all chest x-ray reports and all sputum sample culture and smear results for residents shall be recorded as a permanent part of the resident's medical record and be summarized on the individual's transfer form when an interfacility transfer occurs.

(b) The TST or BAMT status of all staff members and any TB related chest x-ray reports shall be documented in the employee's health record.

Section 26. Reporting to Local Health Departments. (1) The following shall be reported to the local health department having jurisdiction by the administrator of the facility immediately upon becoming known:

(a) All residents and staff who have a TST of ten (10) millimeters or more induration;

(b) A TST result of five (5) or more millimeters of induration for all residents or staff who have medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for their TST result to be interpreted as positive;

(c) A positive BAMT at the time of admission of a resident or employment of a staff member who has direct contact with residents;

(d) TST conversions or BAMT conversions on serial testing or identified in a contact investigation;

(e) Chest x-rays which are suspicious for TB disease;

(f) Sputum smears positive for acid-fast bacilli;

(g) Sputum cultures positive for Mycobacterium tuberculosis; or

(h) The initiation of multi-drug antituberculosis treatment.

Section 27. Treatment for LTBI. (1) A resident or staff member with a TST conversion or a BAMT conversion shall be considered to be recently infected with Mycobacterium tuberculosis.

(2) Recently infected persons shall have a medical evaluation, HIV test, and a chest x-ray.

(3)(a) Individuals who have no signs or symptoms of tuberculosis disease by medical evaluation or chest x-ray shall be offered treatment for LTBI with isoniazid for nine (9) months or rifampin for four (4) months, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician.

(b) Medications shall be administered to residents upon the written order of a physician and shall be given by DOPT.

(4)(a) If a resident or staff member refuses treatment for LTBI or has a medical contraindication, the individual shall be advised of the clinical symptoms of active TB disease, and have an interval medical history for clinical symptoms of active TB disease every six (6) months during the two (2) years following conversion.

(b) A resident less than five (5) years of age who has a status change on admission to the facility or on annual testing shall be seen and monitored by a pediatrician.

(c) A resident or staff member who has a TST result of ten (10) millimeters or more induration or a positive BAMT at the time of admission of the resident or employment of the staff member, shall be offered treatment for LTBI.

(d) A resident or staff member who has a TST result of five (5) or more millimeters of induration at the time of admission or employment and who has medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive shall be offered treatment for LTBI.

(e) If a resident or staff member refuses treatment for LTBI detected on admission or employment or has a medical contraindication, the individual shall be educated about the clinical symptoms of active TB disease, and have an interval medical history for symptoms of active TB disease every six (6) months during the two (2) years following admission or employment. The education shall be documented in either the resident's medical record or the employee's health record.

(5) A resident who stays longer than one (1) year in the facility or staff member who documents completion of treatment for LTBI shall:

(a) Be exempt from further requirements for TSTs or BAMTs; and

(b) Receive education on the symptoms of active TB disease during his or her annual tuberculosis risk assessment and any other monitoring in accordance with Section 21, Section 25, or this section of this administrative regulation.

MARY REINLE BEGLEY, Inspector General
JANINE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.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: Mary Begley, Inspector General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation further conforms to the content of HB 231, passed during the 2010 Session of the General Assembly and codified at KRS 216B.457(21), by establishing requirements for the operation of Level II psychiatric residential treatment facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

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

(a) How the amendment will change this existing administrative

regulation: This amendment changes the existing administrative regulation by establishing requirements for the operation of Level II psychiatric residential treatment facilities pursuant to HB 231, passed during the 2010 Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for compliance with the amendments to KRS Chapter 216B enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.457(21) by establishing requirements for the operation of Level II psychiatric residential treatment facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to provide the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 21 licensed Level I psychiatric residential treatment facilities in Kentucky. This administrative regulation will enable entities to apply for licensure as a Level II psychiatric residential treatment facility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, an entity applying for licensure as a Level II psychiatric residential treatment facility shall:

Submit an application and licensure fee to the Office of Inspector General;

Not be licensed for more than 50 beds;

Be located in a separate part of a psychiatric hospital, separate part of an acute care hospital, in a completely detached building, or on the campus of a Level I psychiatric residential treatment facility if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I facility;

Be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards;

Maintain written documentation related to the facility's administration and operation;

Have a governing body with overall authority and responsibility for the facility's operation;

Have a program director responsible for the administrative management of the facility;

Employ a sufficient number of qualified mental health professionals to meet the treatment needs of residents and goals and objectives of the facility;

Designate one full time qualified mental health professional as the clinical director. (An individual may serve as both the clinical director and the program director);

Employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents 24 hours per day, and submit a staffing plan to the Cabinet in accordance with KRS 216B.457;

Ensure that staff submit to annual in-service training requirements;

Comply with the employee background check requirements of KRS 216B.457;

Provide each resident and the resident's parent, guardian, or custodian with a description of the resident's rights;

Maintain resident records;

Have an organized quality assurance program;

Maintain written admission criteria;

Maintain written policies and procedures related to the facility's intake process;

Perform timely evaluations and assessments for each resident;

Develop and implement each resident's plan of care;

Ensure the provision of mental health services, physical health services, dietary services, emergency services, pharmacy services, educational and vocational services, recreational activities, and speech, language, and hearing services;

Comply with requirements related to the use of restraints and seclusion;

Maintain a clean, safe, and hygienic environment;

Maintain an infection control program; and

Comply with requirements for tuberculosis skin testing of staff and residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a Level I psychiatric residential treatment facility remains $270, as established in this administrative regulation and in 902 KAR 20:008. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds will be $270. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds will be $270, plus $10 for each bed beyond the ninth bed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation and 902 KAR 20:330 will be approved for licensure as a Level I or Level II psychiatric residential treatment facility.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from psychiatric residential treatment facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a Level I psychiatric residential treatment facility remains $270, as established in this administrative regulation and in 902 KAR 20:008. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds will be $270. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds will be $270, plus $10 for each bed beyond the ninth bed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a Level II psychiatric treatment facility.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the licensure of Level I and Level II psychiatric residential treatment facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.457(21)

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 establishes an initial and annual fee of $270 for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds. This amendment also establishes an initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds as $270, plus $10 for each bed beyond the ninth bed. The Cabinet will collect the applicable licensure fee amount from entities applying for licensure as Level II psychiatric residential treatment facilities 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? The Cabinet will collect an annual licensure fee based on the Level II facility's number of beds during subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

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 20:330E

This emergency administrative regulation is being promulgated as an amendment to the existing administrative regulation to establish minimum licensure standards for Level II psychiatric residential treatment facility physical plant requirements. Level II psychiatric residential treatment facilities will offer specialty programs to treat children and adolescents who have a severe emotional disability as defined by KRS 200.503 in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or development disability. Residents of Level II psychiatric residential treatment facilities do not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital, and they have treatment needs that cannot be met in an ambulatory care setting, Level I psychiatric residential treatment facility, or other less restrictive environment. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation required by the passage of HB 231 during the 2010 Session of the General Assembly. Children with severe psychiatric disorders are now treated out-of-state because of a lack of options in Kentucky. However, with the passage of HB 231, children placed out-of- state may return home, and others who would have been placed out of state will now benefit from in-state options through the establishment of Level II psychiatric residential treatment facilities. Failure to enact this administrative regulation on an emergency basis will compromise the cabinet's ability to comply with the requirements of HB 231 enacted by the 2010 General Assembly. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Amendment)

902 KAR 20:330E. Psychiatric residential treatment facilities.

RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.457(21)

EFFECTIVE: October 18, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation establishes physical plant requirements for Level I and Level II psychiatric residential treatment facilities (PRTF). This administrative regulation allows existing facilities or residential units, with modifications, to be licensed as a Level I PRTF facility[~~in this category of health care~~].

Section 1. Definitions. (1) "Certificate of need" is defined by KRS 216B.015(8).

(2) "Licensure agency" means the Cabinet for Health and Family Services, Office of the Inspector General.

(3) "Living unit" means:

(a) The area within a single building that is supplied by a Level I [~~the~~] facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(4) "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5) as a Level I facility or a Level II facility.

Section 2. Preparation and Approval of Plans and Specifications for a Level I or a Level II PRTF. After receipt of[~~the applicant for license has received~~] a certificate of need, if required under KRS Chapter 216B, and before initiation of new construction or renovation, or prior to making a change in function of a facility, the following process shall be followed:

(1) [~~Before initiation of new construction or alterations to an existing building,~~] The licensee or applicant shall submit plans in sufficient detail to show compliance with [~~Section 3 of~~] this administrative regulation to the licensure agency for approval.

(2) Architectural, mechanical, and electrical drawings shall bear either the seal of a professional engineer registered in the Commonwealth of Kentucky or an architect registered in the Commonwealth of Kentucky.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) A copy of the narrative program for a project shall be provided to the licensure agency by the applicant or licensee and shall describe the functional space requirements, staffing patterns, departmental relationships, and organizational plans relating to the fulfillment of the mission and objectives of the facility.

(5) Plans and specifications shall be approved by the licensure agency prior to commencement of construction of a new building, renovation[~~or alterations~~] of an existing facility, or making a change in function of a facility.

(6)[~~building.~~

~~(5)~~] Plans and specifications in specific detail as required by the Kentucky Building Code, 815 KAR 7:120, shall be submitted together with architectural or engineering stamps as required by KRS Chapters 322 and 323, to the Department[~~Office~~] of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. Plans and specifications shall be approved by the Department[~~Office~~] of Housing, Buildings and Construction, and local building permits shall be obtained prior to commencement of construction.

(6) Representatives of the Cabinet for Health and Family Services shall have access at all reasonable times to the work wherever it is in preparation or progress.

Section 3. Level I and Level II PRTF: Compliance with Building Codes, Ordinances, and Administrative Regulations.

(1) A PRTF shall be in compliance with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions.

(2) The following requirements shall apply when a PRTF is constructed, modified, or renovated:

(a) Fire safety pursuant to 815 KAR 10:060.

(b) Plumbing pursuant to 815 KAR 20:010 through 20:195.

(c) Elevators pursuant to 815 KAR 4:010 through 4:025.

(d) Building accessibility by persons with disabilities pursuant to 28 C.F.R. Part 36.

(3) New construction, modification, or renovation shall be approved by the Department[~~Office~~] of Housing, Buildings and Construction prior to occupancy. [~~(4) A facility shall have current approval from the Office of Housing, Buildings and Construction prior to initial licensure and annual relicensure.~~]

Section 4. Level I and Level II PRTF: Facility Requirements and Special Conditions. (1) A facility shall be accessible to and usable by persons with disabilities in compliance with the provisions of the Americans With Disabilities Act, 42 U.S.C. 12101 et seq.

(2) Access to a facility shall be by means of a paved or gravel roadway that is open, free from obstruction, and in good repair.

(3)[~~A copy of the narrative program for a project shall be provided to the licensure agency by the applicant or licensee and shall describe the functional space requirements, staffing patterns, departmental relationships, and organizational plans relating to the fulfillment of the mission and objectives of the facility.~~

~~(4)~~] The building structure and overall physical environment, including the number and type of diagnostic, clinical, and administrative rooms, educational facilities if applicable, and recreational space shall:

(a) Be sufficient to meet the needs of the patient census and specialized program needs of the residents as described in the facility's narrative program document; and

(b) Ensure a secure environment for residents.

Section 5. Living Unit for a Level I PRTF. A living unit shall be located within a single building and shall comply with the requirements in this section:

(1) Bedrooms.

(a) A bedroom shall not be used for sleeping accommodations for more than two (2) residents.

(b) A bedroom shall be equipped with a bed for each resident that shall:

1. Be at least thirty-six (36) inches wide and sixty (60) inches long;

2. Accommodate the resident's size;

3. Be positioned to allow at least three (3) feet of free space between beds and four (4) feet of free space extending directly away from the foot of the bed; and

4. Be located sufficient distance from radiators, heat outlets, and drafts to avoid discomfort.

(c) A resident's bed shall be equipped with:

1. A support mechanism and a clean mattress;

2. A mattress cover with rubber or impervious sheets, if necessary;

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(d) Separate sleeping quarters shall be maintained for male and female residents.

(e) A resident shall not be housed in a room, detached building, or other enclosure which has not been inspected and approved for occupancy by the licensure agency and the Department[~~Office~~] of Housing, Buildings and Construction.

(f) A bedroom shall not be located more than sixty (60) feet from a duty station, and the egress doorway shall be visible to the duty station at all times.

(g) A room shall not be used as a resident bedroom if the access is through another resident's bedroom.

(2) Bathrooms.

(a) Each living unit shall have at least one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every five (5) residents residing within the living unit.

(b) Separate toileting, bathing, and showering facilities shall be maintained and be available for each sex.

(c) Each bathroom shall have a wastebasket and an adequate supply of toilet paper, towels, and soap.

(d) If more than one (1) toilet is required or available in the same room, each shall be partitioned for privacy and shall include a door capable of remaining closed.

(e) Bathing and showering facilities shall have enclosures or screens for individual privacy. Shower heads shall be of institutional safety type.

(f) At least one (1) bathing facility shall have space that is accessible to a resident who uses a wheelchair. The wheelchair-accessible bathing facility may serve both sexes, and the facility shall provide staff to assist residents during bathing and showering.

(g) Each bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a height which shall accommodate individuals with disabilities and other residents.

(h) A bathroom shall not be constructed in such a way as to require a resident to pass through another resident's bedroom for access. The bathroom shall have only one (1) door.

(3) A resident's wardrobe or closet shall have minimum dimensions of one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full-length hanging space including clothes rod and shelf. Additional areas shall be provided for storage of a resident's winter coats, raincoats, and other bulky articles of clothing and shall be locked and under staff control.

(4) Each resident shall have a chair and desk with minimum dimensions of one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(5) Windows accessible to the outside shall be secure and shall prevent unauthorized egress and ingress. Safety features shall be included on windows to ensure glass and glass fragments do not constitute a safety hazard.

(6) If a staff call system is available, provisions shall be made to permit removal of call buttons or use of blank plates if appropriately documented in a resident's treatment plan.

(7) Living, dining, and recreation.

(a) The total area provided for living and recreation shall not be less than forty (40) square feet per resident;

(b) The total area provided for dining shall not be less than fifteen (15) square feet per resident.

(c) The living area shall include comfortable seating for at least ten (10) persons.

(d) Indoor recreation equipment shall be available and appropriate for the ages served and shall be maintained in good condition;

(e) Enclosed storage shall be provided for recreational equipment and supplies;

(f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass, and other objects which pose a safety hazard; and

(g) Outdoor recreation equipment in good condition and appropriate for the ages of the residents shall be provided and maintained.

(8) Each service area shall include a duty station and medicine dispensing area.

(a) A duty station shall be constructed to include adequate space for charting and for conducting all other aspects of a patient's care.

(b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. Medication shall be kept in a locked storage area, a secure, self-contained dispensing unit, or other system capable of maintaining secure and controlled storage.

2. The medication dispensing area shall be under the treatment staff's visual control and shall contain a work counter, refrigerator, sink and locked storage for biologicals and drugs.

3. The medication dispensing unit may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.

4. All controlled substances shall be maintained by staff under double lock.

(c) A dedicated linen storage area shall be available and shall be used for storing clean linens.

(9) The living unit shall have at least one (1) operable food preparation area with sink, stove, and refrigerator, unless a kitchen is directly available within the same building as the living unit.

Section 6. Living Unit for a Level II PRTF. (1) A living unit in a Level II PRTF shall:

(a) Accommodate a maximum of twelve (12) residents; and

(b) Serve one (1) gender.

(2) Environment.

(a) A Level II PRTF shall avoid hidden alcoves or blind areas.

(b) A perimeter security system shall be provided to contain residents in the living unit until clinical staff are able to escort the resident or residents to an adjacent compartment or an exit stair.

(c) The perimeter security system shall:

1. Be designed to prevent contraband smuggling; and

2. Include provisions for monitoring and controlling visitor access and egress.

(d) Openings in the perimeter security system, including windows or doors, shall be controlled by locks, which may be manual, electric, or magnetic.

(3) Bedrooms.

(a) A bedroom shall not be used for sleeping accommodations for more than one (1) resident.

(b) A bedroom shall be equipped with a bed that shall:

1. Be at least thirty-six (36) inches wide and sixty (60) inches long;

2. Accommodate the resident's size; and

3. Be located sufficient distance from radiators, heat outlets, and drafts to avoid discomfort.

(c) A resident's bed shall be equipped with:

1. A support mechanism and a clean mattress;

2. A mattress cover with rubber or impervious sheets, if necessary;

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(d) A resident room shall have a minimum clear floor area of 100 square feet.

(e) A resident shall not be housed in a room, detached building, or other enclosure which has not been inspected and approved for occupancy by the licensure agency and the Department of Housing, Buildings and Construction.

(f) A bedroom shall not be located more than sixty (60) feet from a duty station, and the egress doorway shall be visible to the duty station at all times.

(g) A room shall not be used as a resident bedroom if the access is through another resident's bedroom.

(h) Each resident room shall have a chair and desk with minimum dimensions of one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(4) Resident storage.

(a) Each resident shall have within his or her room a separate wardrobe, locker, or closet for storing personal effects.

(b) Shelves for folded garments shall be used.

(c) Adequate storage shall be available for a daily change of clothes for seven (7) days.

(d) An area separate from the resident's wardrobe, locker, or closet shall be provided for storage of winter coats, raincoats, and other bulky articles of clothing, and shall be locked and under staff control.

(5) Shared bathing and toilet facilities.

(a) A bathtub or shower and a toilet shall be provided for each five (5) or fewer residents.

(b) Each shower or bathing room shall have a toilet.

(c) Bathing facilities shall be designed and located for resident convenience and privacy.

(d) Separate bathing and showering facilities shall be maintained and be available for each sex.

(e) Each bathing facility shall have a wastebasket, an adequate supply of toilet paper, and meet the hand drying provisions established in subsection (10) of this section.

(f) If more than one (1) toilet is available in the same bathing room, each shall be partitioned for privacy and shall include a door capable of remaining closed.

(g) Bathing and showering facilities shall have enclosures or screens for individual privacy. Shower heads shall be of institutional safety type.

(h) At least one (1) bathing facility shall have space that is accessible to a resident who uses a wheelchair. The wheelchair-accessible bathing facility may serve both sexes, and the facility shall provide staff to assist residents during bathing and showering.

(i) Each bathing facility shall contain at least one (1) nondistorting mirror secured to the wall at a height which shall accommodate individuals with disabilities and other residents.

(j) A bathing facility shall not be constructed in such a way as to require a resident to pass through another resident's bedroom for access. The bathing facility shall have only one (1) door.

(k) If indicated in a resident safety risk assessment, toilet room doors shall be equipped with keyed locks that allow staff to control access to the toilet room.

(l) The door to the toilet room shall swing outward or be double–acting.

(m) Each entry door into a resident toilet room shall:

1. Be ADA (Americans with Disabilities Act) or ANSI (American National Standards Institute) compliant; and

2. Shall provide space for staff to transfer residents to the toilet using portable mechanical lifting equipment.

(n) Thresholds in toilet rooms that are ADA or ANSI-compliant shall be designed to facilitate use and prevent tipping of wheelchairs or other portable wheeled equipment by residents and staff.

(6) If a staff call system is available, provisions shall be made to permit removal of call buttons or use of blank plates if appropriately documented in a resident's treatment plan.

(7) Bathing facility hardware and accessories.

(a) Special design considerations for injury and suicide prevention shall be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) ADA or ANSI-compliant grab bars shall be required in ten (10) percent of the toilet rooms. The space between the bar and the wall shall be filled to prevent a cord being tied around it.

(c) Grab bars in resident toilet rooms for fully ambulatory residents shall be removable.

(d) Bars, including those that are part of fixtures which may include soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds.

(e) The following shall not be permitted:

1. Towel bars;

2. Shower curtain rods; and

3. Lever handles, unless a specifically designed anti-ligature lever handle is used.

(8) Sprinkler heads and other protrusions.

(a) In unsupervised resident areas, sprinkler heads shall be recessed or of a design to minimize resident access.

(b) In resident bedrooms and bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other appurtenances shall be of the tamper-resistant type.

(9) Hand-washing stations.

(a) General hand-washing stations used by staff, residents, and food handlers shall be trimmed with valves which may be operated without hands.

(b) Single-lever or wrist blade devices shall be permitted. Blade handles shall be at least four (4) inches.

(c)1. Sensor-regulated water fixtures shall meet user need for temperature and length of time the water flows.

2. Electronic faucets shall be capable of functioning during loss of normal power.

3. Sensor-regulated faucets with manual temperature control shall be permitted.

(10) Provisions for hand drying.

(a) Hand-washing stations shall include a hand-drying device that does not require hands to contact the dispenser and may include:

1. Paper or cloth units enclosed to protect against dust or soil, and to ensure single-unit dispensing;

2. Hot air dryers if installation eliminates possible contamination by recirculation of air.

(b) Hand-washing stations shall include liquid or foam soap dispensers.

(11) Ceilings.

(a) Ceilings shall be monolithic.

(b) Ceiling systems of lay-in ceiling tile design shall not be permitted.

(c) In resident bathrooms:

1. The ceiling shall be secured from access; and

2. Plumbing, piping, duct-work, or other potentially hazardous elements shall be concealed above a ceiling.

(d) In resident bedrooms and bathrooms, ceiling access panels shall be secured.

(e) In resident bedrooms and bathrooms, ventilation grilles shall be:

1. Secured and shall have small perforations to eliminate their use as a tie-off point; or

2. Shall be of sufficient height to prevent resident access.

(12) Doors and door hardware.

(a) Door openings for resident use shall have a minimum clear width of two (2) feet ten (10) inches.

(b) Doors for private resident bathrooms or shower areas shall swing out to allow for staff emergency access.

(c)1. Door closers shall be avoided unless required.

2. Door closer devices, if required on the resident room door, shall be mounted on the public side of the door. The door closer shall be within view of a staff workstation.

(d) Door hinges shall be designed to minimize points for hanging and may include cut hinge type.

(e) Door lever handles. Except for specifically designed anti-ligature hardware, door lever handles shall point downward when in the latched or unlatched position.

(f) Door hardware shall have tamper-resistant fasteners.

(13) Windows.

(a) Each resident room shall have one (1) window.

(b) The minimum net glazing area shall be no less than eight (8) percent of the floor area of the resident's room.

(c) If an operable window is provided in a resident's room, operation of the window shall be restricted to inhibit possible escape or suicide.

(d) Windows shall be designed to limit the opportunities for residents to seriously harm themselves or others.

(e) Glazing (interior and exterior), borrowed lights, and glass mirrors shall be fabricated with laminated safety glass or protected by polycarbonate, laminate, or safety screens.

(g) Insect screens. Windows and outdoor doors that are frequently left open shall be equipped with insect screens.

(14) Furnishings.

(a) Furniture shall be constructed to withstand physical abuse.

(b) Drawer pulls shall be of the recessed type.

(15) Living, dining, and recreation.

(a) The total area provided for living and recreation shall not be less than forty (40) square feet per resident;

(b) The total area provided for dining shall not be less than fifteen (15) square feet per resident.

(c) The living area shall include comfortable seating for at least twelve (12) persons.

(d) Indoor recreation equipment shall be available and appropriate for the ages served and shall be maintained in good condition;

(e) Enclosed storage shall be provided for recreational equipment and supplies;

(f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass, and other objects which pose a safety hazard; and

(g) Outdoor recreation equipment in good condition and appropriate for the ages of the residents shall be provided and maintained.

(16) Each service area shall include a duty station and medicine dispensing area.

(a) A duty station shall be constructed to include adequate space for charting and for conducting all other aspects of a residents' care.

(b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. Medication shall be kept in a locked storage area, a secure, self-contained dispensing unit, or other system capable of maintaining secure and controlled storage.

2. The medication dispensing area shall be under the treatment staff's visual control and shall contain a work counter, refrigerator, sink and locked storage for biologicals and drugs.

3. The medication dispensing unit may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.

(c) A dedicated linen storage area shall be available and shall be used for storing clean linens.

(17) The living unit shall have at least one (1) operable food preparation area with sink, stove, and refrigerator, unless a kitchen is directly available within the same building as the living unit.

Section 7. Classroom Requirements for Level II PRTF Facilities. (1) A Level II PRTF shall have classroom space to accommodate the residents' needs.

(2) A classroom capacity shall not exceed twelve (12) students.

Section 8. Kitchen Area for Level I and Level II PRTF Facilities. (1) If a commercial service is used or if meals are provided by an adjacent facility, dietary areas and equipment shall ensure sanitary, efficient and safe storage, processing, and handling of food products.

(2) If meals are prepared on site, the facility shall have a food service area large enough to accommodate residents and staff, and which shall be capable of maintaining a three (3) day supply of refrigerated and dry foods.

(3) The kitchen area shall include a janitor's closet with sufficient space for storage of housekeeping supplies and equipment and shall include a locked area for hazardous materials.

Section 9.[~~7.~~] Administration Area for Level I and Level II PRTF Facilities. Sufficient space shall be available for administrative operations.

Section 10.[~~8.~~] Consultation and Visitation Rooms for Level I and Level II PRTF Facilities. Professional consultation rooms shall be available for interview, examination, treatment, and visitation. These rooms shall afford privacy for the resident.

Section 11.[~~9.~~] Pharmacy or Drug Area for Level I and Level II PRTF Facilities. Adequate facilities shall be available to accommodate the safe storage and handling of pharmaceuticals including double locking of controlled substances and refrigeration for biologicals and drugs which require refrigeration.

Section 12. Level I PRTF: Requirements for Rooms Designated for Seclusion[~~10. Seclusion Room~~]. (1) If a[~~seclusion~~] room designated for seclusion is provided by a Level I PRTF, it shall be:

(a) Completely padded and constructed to minimize the possibility of a resident's hiding, escape, injury, or suicide and shall not include fixtures, hardware, furniture, receptacles, switches, or other items that may present a risk to a secluded resident; and

(b) Used only for short-term occupancy by a resident who may have become violent or suicidal.

(2) The[~~A seclusion room~~] door to a seclusion room shall swing outward and shall have provisions for constant staff observation while maintaining privacy.

Section 13. Level II PRTF: Requirements for Rooms Designated for Seclusion. (1) Each living unit shall have one (1) room designated for seclusion.

(2) The room designated for seclusion shall:

(a) Be constructed to minimize the possibility of a resident's hiding, escape, injury, or suicide and shall not include fixtures, hardware, furniture, receptacles, switches, or other items that may present a risk to a secluded resident;

(b) Have a minimum clear floor area of sixty (60) square feet with a minimum wall length of seven (7) feet and a maximum wall length of eleven (11) feet;

(c) Not contain outside corners or edges; and

(d) Be accessed by an anteroom or vestibule that provides access to a toilet room. The door openings to the anteroom and the toilet room shall have a minimum clear with of three (3) feet eight (8) inches.

(3) The walls, ceiling, and floor of the room designated for seclusion shall be designed to withstand direct and forceful impact.

(4) The entrance door to the room designated for seclusion shall swing out.

(5) Door openings shall be a minimum clear width of three (3) feet eight (8) inches and shall permit staff observation of the resident through a vision panel, while maintaining provisions for resident privacy.

(6) Minimum ceiling height shall be eight (8) feet.

(7) Electrical switches and receptacles shall be prohibited within the room designated for seclusion.

Section 14. [~~11.~~] Storage and Service Areas for Level I and Level II PRTF Facilities. (1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas shall be provided and shall include:

(a) Storage room for housekeeping equipment that cannot be accommodated by a janitor's closet or other storage area; and

(b) Refuse area located in an area convenient to the service entrance for holding trash prior to disposal.

Section 15. [~~12.~~] Details and Finishes for Level I and Level II PRTF Facilities. The facility shall be constructed and maintained to minimize risk to occupants, staff, and visitors, and shall comply with the following requirements:

(1) Details.

(a) All doors opening onto corridors shall be swing-type except elevator doors.

(b) All doors to a resident's bathroom toilet shall swing outward or shall be equipped with hardware that permits immediate access in case of emergency.

(c) Thresholds and expansion joint covers shall be flush with the floor.

(d)[~~A towel rack or dispenser shall be provided at all lavatories and sinks used for handwashing.~~

~~(e)~~] Ceiling height shall not be less than seven (7) feet and six (6) inches, and shall be no less than eight (8) feet in the room designated as the seclusion room in a Level II PRTF facility.

Section 14.[~~11.~~] Storage and Service Areas for Level I and Level II Facilities. (1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas shall be provided and shall include:

(a) Storage room for housekeeping equipment that cannot be accommodated by a janitor's closet or other storage area; and

(b) Refuse area located in an area convenient to the service entrance for holding trash prior to disposal.

Section 15.[~~12.~~] Details and Finishes for Level I and Level II PRTF Facilities. The facility shall be constructed and maintained to minimize risk to occupants, staff, and visitors, and shall comply with the following requirements:

(1) Details.

(a) All doors opening onto corridors shall be swing-type except elevator doors.

(b) All doors to a resident's bathroom toilet shall swing outward or shall be equipped with hardware that permits immediate access in case of emergency.

(c) Thresholds and expansion joint covers shall be flush with the floor.

(d)[~~A towel rack or dispenser shall be provided at all lavatories and sinks used for handwashing.~~

~~(e)~~] Ceiling height shall not be less than seven (7) feet and six (6) inches, and shall be no less than eight (8) feet in the room designated as the seclusion room in Level II PRTF facility.

(2) Finishes.

(a) Floors shall be easily cleanable and shall have wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. Floors shall have a nonslip finish in all areas that are subject to moisture.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an even transition.

(c) Walls shall be washable and kept clean and shall be moisture-proof in areas that are adjacent to plumbing fixtures. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings shall be washable and kept clean and in good repair.

(e) Rooms containing heat-producing equipment such as laundries and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

Section 16.[~~13.~~] Construction for Level I and Level II PRTF Facilities. (1) Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths.

(2) Proper soil bearing values shall be established in accordance with recognized standards.

(3) If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 17.[~~14.~~] Mechanical Requirements for Level I and Level II PRTF facilities. (1) Steam and hot water systems. If boilers are provided in residential treatment facilities the design and installation shall comply with 815 KAR 15:010 through 15:080.

(2) Temperature.

(a) A minimum temperature of sixty-eight (68) degrees Fahrenheit shall be provided in occupied areas during winter.

(b) A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided in occupied areas during summer.

(3) Plumbing and piping systems.

(a) All showers and bathtubs shall be equipped with a temperature-limiting device at the point of source or point of use which controls hot water at a maximum temperature of 120 degrees Fahrenheit.

(b) Fixtures used in the dietary area, the clean work room and medi/prep area shall be trimmed with valves which can be operated without the use of hands.

(c) If valves are equipped with blade handle controls, the controls shall be approximately four (4) inches in length.

(d) Fixtures shall be installed to provide adequate side clearance for proper use of the blade handles.

(4) Water supply systems.

(a) A water supply system shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) An operable valve shall be installed at each water service main, branch main, riser, and branch to a group of fixtures. Stop valves shall be installed at each fixture.

(c) Insulation shall be maintained on hot, cold and chilled water piping and waste piping on which condensation may occur. Insulation of cold and chilled water lines shall include an exterior barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibs and on all fixtures onto which hoses or tubing can be attached.

(e) Hot water distribution systems shall be arranged to provide hot water at each fixture.

(f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from overhead piping systems.

(5) Hot water heaters and tanks.

(a) Hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

Gal/hr/bed	6 1/2
Temperature (Degrees Fahrenheit)	100-120

(b) A storage tank shall be provided and shall be fabricated of corrosion-resistant metal or have a noncorrosive lining.

(6) Prior to licensure, all plumbing specifications shall be approved by the Kentucky Division of Plumbing, Department[~~Office~~] of Housing, Buildings and Construction.

Section 18.[~~15.~~] Electrical Requirements for Level I and Level II PRTF Facilities. (1) Electrical requirements of the Kentucky Building Code shall apply.

(2) The wiring in each PRTF shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility prior to occupancy; except, the wiring in existing buildings shall be approved by a certified electrical inspector only if the building has not been previously so approved for health care occupancy or if the State Fire Marshal finds that a hazardous condition exists.

(3) All breakers and switches shall be indexed.

(4) Spaces occupied by people, machinery, and equipment within buildings, the corresponding approaches, and parking lots shall have electric lighting.

(5) Residents' bedrooms shall have general lighting, a night light, and, if appropriate, a reading light.

(6) A resident's bedroom shall have duplex receptacles as follows:

(a) One (1) side of the head of each bed; receptacles for luminaries, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

(7) Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

MARY REINLE BEGLEY, Inspector General
JANINE MILLER, Secretary

APPROVED BY: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.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: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure standards for psychiatric residential treatment facility physical plant requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure standards for psychiatric residential treatment facility physical plant requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure physical plant requirements to ensure safe, adequate, and efficient health facilities.

(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 the Office of Inspector General with authority to ensure that psychiatric residential treatment facilities provide adequate and safe physical plants to meet resident need.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by establishing physical plant requirements for Level II psychiatric residential treatment facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for compliance with the amendments to KRS Chapter 216B enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.457(21) by establishing physical plant requirements for Level II psychiatric residential treatment facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to provide the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 21 licensed Level I psychiatric residential treatment facilities in Kentucky. This administrative regulation will enable entities to apply for licensure as a Level II psychiatric residential treatment facility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, an entity applying for licensure as a Level II psychiatric residential treatment facility shall:

Submit plans and specifications to the Office of Inspector General for approval prior to initiation of new construction or renovation, or prior to making a change in function of a facility;

Comply with applicable building codes, ordinances, and administrative regulations;

Provide a living unit designated for daily living and therapeutic interaction of no more than 12 residents;

Ensure that the environment of the facility's living unit is configured to accommodate this administrative regulation's requirements for safety and security;

Provide bedrooms that are not used for sleeping accommodations for more than one resident;

Have bathing and toilet facilities for each five or fewer residents; and

Adhere to this administrative regulation's requirements related to bedrooms, bathing facilities, ceilings, doors and hardware, windows, furnishings, living and recreational areas, the nursing station and medicine dispensing area, food preparation area, classroom requirements, consultation and visitation rooms, storage of pharmaceuticals, rooms designated for seclusion if provided by the facility, storage space, details and finishes, construction, water systems, and electrical requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Facilities do not incur additional costs for compliance with the physical plant requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with the physical plant requirements of administrative regulation and the operation and service requirements of 902 KAR 20:320 will be approved for licensure as a Level I or Level II psychiatric residential treatment facility.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from psychiatric residential treatment facilities under 902 KAR 20:320 and state general funds.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.457(21)

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 relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities and therefore does not generate revenue for state government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities and therefore does not generate revenue for state government.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, November 9, 2010)

200 KAR 5:410. Preferences for purchases of commodities or services.

RELATES TO: KRS 45A.465, 45A.470
STATUTORY AUTHORITY: KRS 45A.470, 45A.045(2), 45A.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS **45A.045(2) requires the Finance and Administration Cabinet to promulgate administrative regulations to govern purchasing by or for agencies. This administrative regulation establishes requirements setting forth the preference given to qualified entities identified in KRS 45A.470(1).** **[**~~45A.470 requires that all governmental bodies and political subdivisions of the state shall give certain entities preference when purchasing commodities or services~~**]**.

Section 1. Definitions. (1) "Bidder" means any entity submitting a response to a solicitation.

(2) "Qualified bidder" means Kentucky Industries for the Blind, Incorporated; any nonprofit corporation that furthers the purposes of KRS Chapter 163; or a qualified nonprofit agency for individuals with severe disabilities as described in KRS 45A.465(3).

(3) "Solicitation" means any invitation for bids, request for proposals, advertisement for bid, or any other method of soliciting a contract issued by a public agency.

Section 2. Percentage Preference. (1) Products made by the Department of Corrections, Division of Prison Industries**,** shall receive a preference equal to twenty (20) percent of the maximum points awarded to a bidder in a solicitation.

(2) Products or services provided by a qualified bidder shall receive a preference equal to fifteen (15) percent of the maximum points awarded to a bidder in a solicitation.

Section 3. Claiming Qualified Bidder Status. (1) Except for Kentucky Industries for the Blind, Incorporated, a bidder claiming qualified bidder status shall submit along with its response to a solicitation a notarized affidavit which affirms that it meets the requirements to be considered a qualified bidder.

(2) If requested, failure to provide documentation to a public agency proving qualified bidder status may result in disqualification of the bidder or contract termination.

JONATHAN MILLER, Secretary
APPROVED BY AGENCY: September 14, 2010
FILED WITH LRC: September 14, 2010 at 4 p.m.
CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(As Amended at ARRS, November 9, 2010)

201 KAR 7:075. Continuing education requirements.

RELATES TO: KRS 334.150**(13)**
STATUTORY AUTHORITY: KRS 334.150**(9), (13)**
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334.150(13) authorizes the board to promulgate administrative regulations establishing requirements and standards for continuing education. This administrative regulation establishes a continuing education program for licensed hearing instrument specialists, setting** **[**~~The purpose of this administrative regulation is to establish a continuing education program for licensed hearing instrument specialists; to set~~**]** forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. Each licensee shall be required to complete a minimum of ten (10) continuing education hours in order to renew his **or her** license each year. Continuing education hours for hearing instrument specialists in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 2. A minimum of five (5) of the required ten (10) continuing education hours shall be attained through programs sponsored by entities listed in Section 3(1) of this administrative regulation and attended in person **by the licensee** in a live, classroom presentation format. The remaining continuing education hours may be attained through any of the sources listed in Section 3 of this administrative regulation.

Section 3. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of hearing instrument specialists. **Continuing education hours[**~~They~~**]** may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions and approved by the board:

(a) The Hearing Aid Association of Kentucky (HAAK);

(b) The Kentucky Speech-Language and Hearing Association (KSHA);

(c) The International Hearing Society (IHS), or any of its affiliated state chapters;

(d) The American Speech-Language and Hearing Association (ASHA), or any of its affiliated state chapters;

(e) The Academy of Dispensing Audiologists (ADA), or any of its affiliated state chapters;

(f) The American Academy of Audiology (AAA), or any of its affiliated state chapters; or

(g) The American Academy of Otolaryngology, or any of its affiliated state chapters.

(2) Relevant offerings of the following types that have been reviewed and approved by the board:

(a) Manufacturers professional seminars; **or**

(b) Accredited schools' continuing education programs.

(3) Related areas not specifically a part of the field of hearing instruments may be approved for up to two (2) continuing education hours, if the board believes that the related areas may serve to enhance the licensee's ability to practice.

Section 4. **The sponsor of a continuing education program shall be responsible for obtaining from the board accreditation for the sponsor's continuing education program.** **[**~~Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.~~**]**

(1) A sponsor shall be any person, school, association, company, corporation, or group who wishes to develop a continuing education program.

(2) **A program** **[**~~Programs~~**]** shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the experience prior to actual participation.

(3) **A request for a program change** **[**~~Requests for program changes~~**]** shall be made to and accredited by the board. Failure to make **a request for a program change** **[**~~requests for program changes~~**]** to the board in compliance with this subsection shall render the evaluation and accreditation of the program null and

void.

(4) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(5) **A sponsor[**~~Sponsors~~**]** shall maintain for three (3) years records of the name of those participants who complete a program.

Section 5. **A sponsor or licensee[**~~Sponsors and licensees~~**]** requesting approval of continuing education for hearing instrument specialists shall submit an application to the board. **Each licensee [**~~Licensees~~**]** shall keep valid records, receipts, and certifications of continuing education hours completed for three (3) years and submit certification to the board on request.

Section 6. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 334.

Section 7. **(1)** Each licensee shall submit, with the annual renewal, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year.

(2) If any licensee shall fail to submit a list of continuing education hours by the first of February, the board secretary shall notify the licensee at his last known address that his license shall be subject to suspension.

(3) Upon proper application to the board a licensee may be granted a deferral on a year to year basis at the discretion of the board for reasons as illness, incapacity, or other similar extenuating circumstances.

(4) A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.

Section 8. Each licensee shall keep the board informed of his **or her** correct address.

Section 9. Incorporation by Reference. (1) "Renewal Application", RA-2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Licensing Board for Specialists in Hearing Instruments, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN CLARK, Chairman

APPROVED BY AGENCY: September 15, 2010

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

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, November 9, 2010)

201 KAR 17:030. License fees and renewal requirements.

RELATES TO: KRS 334A.160, 334A.170

STATUTORY AUTHORITY: KRS 334A.080(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.080(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. This administrative regulation establishes the required fees and the requirements for inactive status.

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, fifty (50) dollars.

(2) Application for an audiologist license, fifty (50) dollars.

(3) Combined application fee for a speech-language pathologist and audiologist license, $100.

(4) Application fee for a speech-language pathology assistant license, fifty (50) dollars.

(5) Application fee for interim licensure for a speech-language pathologist, fifty (50) dollars.

(6) Application fee for interim licensure for an audiologist, fifty (50) dollars.

(7) Combined fee for speech-language pathologist and audiologist interim licensure, $100.

(8) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) dollars.

(9) Initial speech-language pathologist license fee of $100 or $150 if issued for the biennium.

(10) Initial audiologist license fee of $100 or $150 if issued for the biennium.

(11) Combined speech-language pathologist and audiologist license fee of $200 if issued for the biennium.

(12) Initial speech-language pathology assistant license fee of seventy-five (75) dollars or $125 if issued for the biennium.

(13) Biennial renewal fee for speech-language pathologist license, $100.

(14) Biennial renewal fee for audiologist license, $100.

(15) Biennial combined renewal fee for speech-language pathologist and audiologist license, $200.

(16) Biennial renewal fee for speech-language pathology assistant, $100.

(17) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.

(18) Biennial renewal fee for grace period extending from January 31 to March 2:

(a) For speech-language pathologist license, $150.

(b) For audiologist license, $150.

(c) Combined fee for speech-language pathologist and audiologist license, $300.

(d) For speech-language pathology assistant, $150.

(19) In addition to the biennial renewal fees provided for in Section 1(9) through (10) delinquency fees after March 2 shall be:

(a) For speech-language pathologist license, $150.

(b) For audiologist license, $150.

(c) Biennial combined fee for speech pathologist and audiologist license, $300.

(d) For speech-language pathology assistant, $150.

Initial speech-language pathologist license fee, $100.

Section 2. (1) A completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:

(a) Renew his license;

(b) Request to return to an active status from an inactive status;

(c) Request, or remain on, an inactive status; or

(d) Terminate licensure.

(2) The schedule of licensure renewals shall be as follows:

(a) **A licensee shall renew his or her license biennially.**

(b) The licensee shall pay the appropriate renewal fee as established in Section 1(13)-(16) of this administrative regulation. [~~Effective January 1, 2009:~~

~~1. All licensees shall renew their licenses.~~

~~2. A licensee having a license number ending in an even number shall:~~

~~a. Renew for a period of one (1) year; and~~

~~b. Pay one-half of the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation; and~~

~~3. A licensee having a license number ending in an odd number shall:~~

~~a. Renew for a period of two (2) years; and~~

~~b. Pay the appropriate renewal fee established in Section 1(9)-~~

~~(14) of this administrative regulation.~~

~~(b) Effective January 1, 2010, a licensee:~~

~~1. Shall renew the license biennially on or before January 31st; and~~

~~2. Shall pay the appropriate renewal fee as established in Section 1(9) through (14) of this administrative regulation.~~**]**

Section 3. If an application is filed during the period of December 1 to January 30 and a license issued, the board shall waive the renewal of the license for the ensuing licensing year.

Section 4. Inactive Licenses. (1) Fees.

(a) The inactive license fee for a speech-language pathologist for a biennial licensing period shall be twenty (20) dollars.

(b) The inactive license fee for an audiologist for a biennial licensing period shall be twenty (2) dollars.

(c) The combined inactive license fee for a speech-language pathologist and audiologist for a biennial licensing period shall be twenty (20) dollars.

(d) The inactive license fee for a speech-language pathology assistant for a biennial licensing period shall be twenty (20) dollars.

(2) Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:

(a) Filing a completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate;

(b) Payment of the current renewal fee as set forth in Section 1 of this administrative regulation; and

(c) Compliance with the continuing education requirements established in 201 KAR 17:090, Sections 10 and 11.

(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee for the licensing year.

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

(a) "Renewal Application", September 2010 [~~2009~~]; and

(b) "Renewal Application for Speech-Language Pathology Assistants", September 2010 [~~2009~~].

(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.

KELLIE ELLIS, Board Chair

APPROVED BY AGENCY: September 14, 2010

FILED WITH LRC: September 14, 2010 at 4 p.m.

CONTACT PERSON: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, November 9, 2010)

201 KAR 20:061. Doctor of Nursing Practice (DNP) degree.

RELATES TO: KRS 314.111, **2010 Ky. Acts ch. 80 [**~~SB 127 (2010 RS)~~**]**

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: **2010 Ky. Acts ch. 80 requires the Board of Nursing to collaborate with the Council on Postsecondary Education to establish [**~~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**, Section 1(2)(p)-(q).**

(2) The notification letter shall include the following:

(a) The desired date for the admission of the first class;

(b) That the Council on Postsecondary Education has been notified;

(c) That the postsecondary education institution intends to apply for additional accreditation for the DNP degree; and

(d) How the proposed track or degree complies with the provisions outlined in Section 2(2) of this administrative regulation;

(3) When the notification letter is received by the board, the board shall grant the institution initial approval. [~~(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) **An institution not presently accredited by NLNAC or CCNE that desires to establish a DNP degree shall meet the following requirements:**

(a) It shall be accredited as outlined in 201 KAR 20:260, Section 1;

(b) It 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) An application shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students;

(e) An 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; and

(f) The program shall not advertise or enroll students until such time that the board has granted initial approval status.

(2) The application shall include:

(a) General information about the institution including:

1. Mission;

2. Ownership;

3. Method of financing;

4. Accreditation;

5. Enrollment;

6. Area served

7. Institutional faculty qualifications; and

8. Resources that are sufficient to support defined outcomes and goals;

(b) An organizational chart of the institution and a written plan which describes the organization of the program of nursing and its relationship to the institution;

(c) A designation of NLNAC or CCNE as the national nursing accrediting body to be used in the development of the program;

(d) A description and rationale for the proposed DNP degree;

(e) Approval from the governing body of the institution proposing the DNP degree or other empowered approval bodies as applicable;

(f) A copy of the curriculum vitae of the registered nurse identified as the designated head of the nursing unit;

(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) A 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) The philosophy of the DNP program and program outcomes for graduates;

(m) Curriculum design for each identified track to include:

1. Proposed course sequence;

2. Description of courses; and

3. Credit hours delineating those credits assigned to theory and practice;

(n) Availability of experiential practice activities sufficient to accommodate the number of students and program outcomes;

(o) A five (5) year plan for recruiting and retaining qualified nurse faculty; and

(p) A recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(3) 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 shall be for no more than a two (2) year period of time pending review and approval by NLNAC or CCNE.

(4) If 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.

(5) The initial approval of a DNP program shall expire eighteen (18) months from the date of approval if a class of students is not admitted.

(6) 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.

(7) The designated head of the nursing unit shall notify the board within five (5) business days of any change in accreditation status.

(8) 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.

(9) 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.

(10) The governing institution shall be notified in writing of action taken by the board on the site visit report. [~~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.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, November 9, 2010)

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 chief nursing academic officer[~~unit administrator~~]" means that individual who has academic and administrative authority for the overall nursing program [~~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:

1. The name of the institution;

2. The address of the institution;

3. Contact information for the chief nursing academic officer;

4. The degree offered; and

5. All **[**~~name of institution, address, contact information for designated chief nursing academic officer~~**][**~~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 **or[*/*]** reaccreditation 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 chief nursing academic officer [~~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)**(a)** 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;

(b) Following the meeting referenced in paragraph (a) of this subsection, the institution [~~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) **An** **[**~~The governing~~**]** institution may receive consultation from the board prior to establishing an APRN program of nursing.

(2) **An** **[**~~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) **An** **[**~~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 **institution[**~~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 chief nursing academic officer [~~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 **institution[**~~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**:**

1. Mission;

2. Ownership;

3. Method of financing;

4. Accreditation;

5. Enrollment;

6. Area served

7. Institutional faculty qualifications; and

8. Resources that are sufficient to support defined outcomes and goals;

(b) An organizational chart of the institution and a written plan which describes the organization of the program of nursing and its relationship to the institution;

(c) A designation of the current or desired national nursing accrediting body to be used in the development of the program;

(d) A description and rationale for the proposed type of APRN program to include the certificate or degree to be awarded and the population foci; **[**~~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) **A 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) The philosophy of the APRN program and program outcomes for graduates;

(m) Curriculum design for each identified track to include:

1. Proposed course sequence;

2. Description of courses; and

3. Credit hours delineating those credits assigned to theory and practice; **[**~~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) **The** availability of clinical experiences sufficient to accommodate the number of students to include **the** 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 **shall[**~~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)**(a)** 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.

(b) 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)**(a)** Following **a[**~~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 chief nursing academic officer [~~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**:**

(d)[~~, and~~**]** At least two (2) years of clinical experience; and

(e)[~~(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 or health-related field in the clinical specialty from an accredited college or university which accreditation is recognized by the U.S. Department of Education; **[**~~and~~**]**

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration;[~~,~~] and

(d) 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 **shall [**~~will~~**]** [~~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 **shall [**~~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**. A majority of the preceptors shall be nurses. [**~~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 **(1)** population foci shall include the following components:

(a) Clinical supervision **as specified by the national certifying organizations applicable to the APRN role and population focus set forth in 201 KAR 20:056, Section 3(2); and [**~~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**:**

1. "AACN Essentials for Masters Education for Advanced Practice Nursing" if the program grants a master's degree or post-master's certificate or "AACN Essentials for Doctoral Education for Advanced Nursing Practice" if the program grants a doctoral degree; or

2. "NLNAC Standards and Criteria Master's and Post-Master's Certificate" if the program grants a master's degree or post-master's certificate or "NLNAC Standards and Criteria Clinical Doctorate" if the program grants a doctoral degree.

(2) [~~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.

(3)[~~(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.

(4)[~~(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.

(5)[~~(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.

(6)[~~(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.

(7)[~~(8)~~**]** Preparation in a specialty area of practice is optional, but if included, **it shall[**~~must~~**]** build on the APRN role/population-focus competencies. Clinical and didactic coursework **shall[**~~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**. The following criteria shall be[**~~; 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 **or[**~~/~~**]** 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 **shall[**~~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 **a** 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 **any deficiencies have [**~~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)**(a)** 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**.**

(b)[~~:~~**]** 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 **(7)[**~~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 **these [**~~such~~**]** sessions for citizens of the Commonwealth.

(2) For out-of-state nursing programs, a[~~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) **A program [**~~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 **of** the health care facility hosting the clinical experience.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AACN Essentials for Master's Education for Advanced Practice Nursing", 1996 Edition, American Association of Colleges of Nursing;

(b) "AACN Essentials for Doctoral Education for Advanced Nursing Practice, 2006 Edition, American Association of Colleges of Nursing;

(c) "NLNAC Standards and Criteria Master's and Post-Master's Certificate", 2008 Edition, National League for Nursing Accrediting Commission; and

(d) "NLNAC Standards and Criteria Clinical Doctorate", 2008 Edition, National League for Nursing Accrediting Commission.

(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, 8:00 a.m. to 4:30 p.m.

CAROL A. KOMARA, President

APPROVED BY AGENCY: September 16, 2010

FILED WITH LRC: September 28, 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.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, October 12, 2010, and November 9, 2010)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by Federation of State Boards of Physical Therapy (FSBPT)**.[**~~,~~

~~1.~~**]** An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1.[~~a.~~**]** Completion of appropriate coursework at a regionally accredited academic institution;

2.[~~b.~~**]** Continuing education in a course approved by the board; or

3.[~~c.~~**]** Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board**;[**~~.~~**]**

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL® Internet-based test (TOEFL iBT): Writing, twenty-four (24), Speaking, twenty-six (26), Listening, eighteen (18), Reading, twenty-one (21); with an overall score of not less

than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050;

(e) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be for not less than 390 hours in a 3 month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(e) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (d) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing, 9/2/04"; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, 10/12/00".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: August 10, 2010

FILED WITH LRC: August 12, 2010 at 10 a.m.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(As Amended at ARRS, November 9, 2010)

201 KAR 28:010. Definitions and abbreviations.

RELATES TO: KRS 319A.010-319A.210

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the Kentucky Board of Licensure for Occupational Therapy to promulgate administrative regulations pertaining to the practice and licensure of occupational therapists and occupational therapy assistants. This administrative regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of Chapter 319A and the administrative regulations.

Section 1. Definitions. **"ACOTE" means the Accreditation Council for Occupational Therapy Education.**

(2) "Act" means the Kentucky Occupational Therapy Act as established in KRS 319A.010 to 319A.990.

(3) "Adjunct" means methods, strategies, or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.

(4) "AOTA" means the American Occupational Therapy Association.

(5) "Assistive technology" means any item, piece of equipment, or product system, whether commercially available, modified, or custom designed, that is used to increase, maintain, or enhance the occupational performance of an individual.

(6) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication; and includes the following activities:

(a) Bathing and showering;

(b) Bowel and bladder management;

(c) Dressing;

(d) Eating and feeding;

(e) Functional mobility;

(f) Personal device care;

(g) Personal hygiene and grooming;

(h) Sexual activity;

(i) Sleep and rest; and

(j) Toilet hygiene.

(7) "Certified hand therapist" (CHT) means a person who is certified by the Hand Therapy Certification Commission.

(8) "Board" is defined by KRS 319A.010(1).

(9) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.

(10) "Components of performance" means the demands of an activity which include human, object and contextual factors including objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.

(11) "COTA" means a certified occupational therapy assistant.

(12) "COTA/L means a certified occupational therapy assistant/licensed.

(13) "Ergonomic principles" means:

(a) The study of:

1. Relationships between components of performance;

2. People as it relates to their occupations, the equipment they use and their environment; and

3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and

(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self-care, productivity, work, and leisure and may include job analysis, consultation, and educational activities.

(14) "Functional mobility" means moving from one (1) position or place to another including in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating and transfers.

(15) "Gait training" means the instruction of proper walking patterns.

(16) "General supervision" means an interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.

(17) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:

(a) Care of others;

(b) Care of pets;

(c) Child rearing;

(d) Communication device use;

(e) Financial management;

(f) Health management and maintenance;

(g) Home establishment, management, and maintenance;

(h) Meal preparation and cleanup;

(i) Safety procedures and emergency responses;

(j) Shopping; and

(k) Selection and supervision of caregivers.

(18) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.

(19) "OTA/L" means an occupational therapy assistant/licensed.

(20) "OT/L" means an occupational therapist/licensed.

(21) "OT" means occupational therapy.

(22) "OTR/L" means an occupational therapist registered/licensed.

(23) "OTR" means an occupational therapist registered.

(24) "Performance abilities" means the utilization of performance skills in the participation of active daily life.

(25) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.

(26) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning, and coordination of daily living activities.

(27) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

(28) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.

(29) "Restoration" means to restore a performance skill or ability that has been impaired.

(30) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with skills including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration. [~~(1) "Act" means the Kentucky Occupational Therapy Act as established in KRS 319A.010 to 319A.990.~~

~~(2) "AOTA" means the American Occupational Therapy Association.~~

~~(3) "ACOTE" means the Accreditation Council for Occupational Therapy Education.~~

~~(4) "Board" is defined by KRS 319A.010(1).~~

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~~(9) "OT" means occupational therapy.~~

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~~(11) "OTR" means an occupational therapist registered.~~

~~(12) "Adjunct" means methods, strategies, or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.~~

~~(13) "Assistive technology" means any item, piece of equipment, or product system, whether commercially available, modified, or custom designed, that is used to increase, maintain, or enhance the occupational performance of an individual.~~

~~(14) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication; and includes the following activities:~~

~~(a) Bathing and showering;~~

~~(b) Bowel and bladder management;~~

~~(c) Dressing;~~

~~(d) Eating and feeding;~~

~~(e) Functional mobility;~~

~~(f) Personal device care;~~

~~(g) Personal hygiene and grooming;~~

~~(h) Sexual activity;~~

~~(i) Sleep and rest; and~~

~~(j) Toilet hygiene.~~

~~(15) "Certified hand therapist" (CHT) means a person who is certified by the Hand Therapy Certification Commission.~~

~~(16) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.~~

~~(17) "Components of performance" means the demands of an activity which include human, object and contextual factors such as objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.~~

~~(18) "Ergonomic principles" means:~~

~~(a) The study of:~~

~~1. Relationships between components of performance;~~

~~2. People as it relates to their occupations, the equipment they use and their environment; and~~

~~3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and~~

~~(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self-care, productivity, work, and leisure and may include job analysis, consultation, and educational activities.~~

~~(19) "Functional mobility" means moving from one (1) position or place to another, such as in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating and transfers.~~

~~(20) "Gait training" means the instruction of proper walking patterns.~~

~~(21) "General supervision" means a interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.~~

~~(22) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:~~

~~(a) Care of others;~~

~~(b) Care of pets;~~

~~(c) Child rearing;~~

~~(d) Communication device use;~~

~~(e) Financial management;~~

~~(f) Health management and maintenance;~~

~~(g) Home establishment, management, and maintenance;~~

~~(h) Meal preparation and cleanup;~~

~~(i) Safety procedures and emergency responses;~~

~~(j) Shopping; and~~

~~(k) Selection and supervision of caregivers.~~

~~(23) "Occupations" means activities, tasks or roles that individ-~~

~~uals engage in which provide intrinsic value and meaning for the individual, society, and culture.~~

~~(24) "Performance abilities" means the utilization of performance skills in the participation of active daily life.~~

~~(25) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.~~

~~(26) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning, and coordination of daily living activities.~~

~~(27) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.~~

~~(28) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.~~

~~(29) "Restoration" means to restore a performance skill or ability that has been impaired.~~

~~(30) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration.~~**]**

KELLY NASH, Chairperson

APPROVED BY AGENCY: August 5, 2010

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

CONTACT PERSON: Frances Short, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(As Amended at ARRS, November 9, 2010)

201 KAR 28:130. Supervision of occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders.

RELATES TO: KRS 319A.010(4), (5), 319A.100

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations to define appropriate supervision for persons who are delivering occupational therapy services. This administrative regulation establishes the requirements of that supervision, the documentation required in supervision, and the process for reviewing the supervision process[~~defines terms necessary to clarify the statutory definition of occupational therapy services~~].

Section 1. Definitions. (1)[~~"Adjunct" means methods, strategies or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.~~

~~(2) "Assistive technology" means any item, piece of equipment, or product system, whether commercially available, modified or custom designed, that is used to increase, maintain or enhance the occupational performance of an individual.~~

~~(3) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication and includes the following activities:~~

~~(a) Bathing and showering;~~

~~(b) Bowel and bladder management;~~

~~(c) Dressing;~~

~~(d) Eating and feeding;~~

~~(e) Functional mobility;~~

~~(f) Personal device care;~~

~~(g) Personal hygiene and grooming;~~

~~(h) Sexual activity;~~

~~(i) Sleep and rest; and~~

~~(j) Toilet hygiene.~~

~~(4) "Certified hand therapist" (CHT) means a person who is certified by the Hand Therapy Certification Commission.~~

~~(5) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.~~

~~(6) "Components of performance" means the demands of an activity which include human, object and contextual factors such as objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.~~

~~(7)~~] "Countersign" means the OT/L signs the client's documentation after actively reviewing the history of the intervention provided to the client and confirming that, in light of the entire intervention plan, the OTA/L's entry is proper.

(2)[~~(8) "Ergonomic principles" means:~~

~~(a) The study of:~~

~~1. Relationships between components of performance;~~

~~2. People as it relates to their occupations, the equipment they use and their environment; and~~

~~3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and~~

~~(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self-care, productivity, work and leisure and may include job analysis, consultation, and educational activities.~~

~~(9)~~] "Face-to-face supervision" means being physically present in the room and being able to directly communicate with an individual while observing and guiding the activities of that individual, including:

(a) A review of the occupational therapy services being provided to a client that might affect the therapeutic outcomes and the revision of the plan of care for each client; and

(b) An interactive process between the supervisor and the individual under supervision involving direct observation, cotreatment, dialogue, teaching, and instruction in a face-to-face setting.

(3)[~~(10) "Functional mobility" means moving from one (1) position or place to another, such as in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating and transfers.~~

~~(11) "Gait training" means the instruction of proper walking patterns.~~

~~(12) "General supervision" means a interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.~~

~~(13) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:~~

~~(a) Care of others;~~

~~(b) Care of pets;~~

~~(c) Child rearing;~~

~~(d) Communication device use;~~

~~(e) Financial management;~~

~~(f) Health management and maintenance;~~

~~(g) Home establishment, management, and maintenance;~~

~~(h) Meal preparation and cleanup;~~

~~(i) Safety procedures and emergency responses;~~

~~(j) Shopping; and~~

~~(k) Selection and supervision of caregivers.~~

~~(14) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the~~

~~individual, society, and culture.~~

~~(15) "Performance abilities" means the utilization of performance skills in the participation of active daily life.~~

~~(16) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.~~

~~(17) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning and coordination of daily living activities.~~

~~(18) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.~~

~~(19) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.~~

~~(20) "Restoration" means to restore a performance skill or ability that has been impaired.~~

~~(21) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration.~~

~~(22)~~] "Supervisor" means the OT/L who is providing supervision.

Section 2. General Policy Statement for Supervision. (1) The OT/L shall have the ultimate responsibility for occupational therapy outcomes. Supervision shall be a shared responsibility.

(2) The supervising OT/L shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision.

(3) Supervision by the OT/L of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and skilled in a particular practice area.

Section 3. Supervision of Licensed Occupational Therapy Assistants. (1) An OTA/L shall assist in the practice of occupational therapy only under the supervision of an OT/L.

(2) The supervisor shall provide no less than four (4) hours per month of general supervision for each occupational therapy assistant which shall include no less than two (2) hours per month of face-to-face supervision.

(3) The amount of supervision time shall be prorated for a part-time OTA/L.

(4) The supervisor or the OTA/L may institute additional supervision based on the competence and experience of the OTA/L.

(5) The supervisor shall assign and the OTA/L shall accept only those duties and responsibilities for which the OTA/L has been specifically trained and which the OTA/L is qualified to perform.

(6) Specific responsibilities for supervising OT/Ls and OTA/Ls.

(a) Assessment and reassessment.

1. Client evaluation is the responsibility of the OT/L.

2. The OTA/L may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations.

3. The OTA/L may not evaluate independently or initiate therapy prior to the OT/L's evaluation.

(b) Intervention planning.

1. The OT/L shall take primary responsibility for the intervention planning.

2. The OTA/L may contribute to the intervention planning as directed by the OT/L.

(c) Intervention.

1. The OT/L shall be responsible for the outcome and delivery of the occupational therapy intervention.

2. The OT/L shall be responsible for assigning appropriate therapeutic interventions to the OTA/L.

(d) Discontinuation of intervention.

1. The OT/L shall be responsible for the discontinuation of occupational therapy services.

2. The OTA/L may contribute to the discontinuation of intervention as directed by the OT/L.

(7) Documentation requirements.

(a) The supervisor shall countersign those aspects of the initial evaluation, the plan of care, and the discharge summary recorded by the OTA/L within fourteen (14) calendar days of the notation, which documentation shall be included in the client's permanent record.

(b) The supervising OT/L and individuals under supervision shall each maintain a [~~supervising OT/L's~~] log which shall document:

1. The frequency[~~and type~~] of the supervision provided;[~~and~~]

2. The[~~process of supervision utilized, such as~~] observation, dialogue and discussion, and instructional techniques employed;

3. The type of supervision provided, either general or face-to-face;

4 The dates on which the supervision occurred; and

5. The number of hours worked by the OTA/L each month.

(c) It shall be the responsibility of the supervising OT/L to maintain a list of any OTA/L that he or she has supervised with the OTA/L's name and license number.

(d) It shall be the responsibility of the OTA/L under supervision to maintain a list of his or her supervising OT/L with that individual's name and license number.

(8) A supervising OT/L shall not have more than the equivalent of three (3) full time OTA/Ls under supervision at any one (1) time.

(9)(a) In extenuating circumstances, when the OTA/L is without supervision, the OTA/L may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought.

(b) It shall be the responsibility of the OTA/L to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation.

(10) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the OTA/Ls under his or her supervision.

Section 4. Supervision of Occupational Therapy Aides. (1) An occupational therapy aide shall provide supportive services only with face-to-face supervision from an OT/L or OTA/L.

(2) The supervising OT/L or OTA/L shall be in direct verbal and visual contact with the occupational therapy aide, at all times, for all therapy-related activities.

Section 5. Occupational Therapy Students. (1) A person practicing occupational therapy and performing occupational therapy services under KRS 319A.090(1)(c) shall be enrolled in an ACOTE accredited occupational therapy or occupational therapy assistant educational program or its equivalent.

(2) When an occupational therapy student is participating in supervised fieldwork education experiences, the student may, at the discretion of the supervising OT/L or OTA/L, be assigned duties or functions commensurate with his or her education and training.

(3) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the students under his or her supervision.

Section 6. Temporary Permits. (1) A temporary permit holder shall be:

(a) Supervised by an OT/L; and

(b) The OT/L shall be responsible for all occupational therapy outcomes.

(2) The supervising OT/L shall be available at all times to provide supervision.

(3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily.

(4) The temporary permit holder who is applying for a license as an OT/L may perform all of the functions of the OT/L, with the exception of supervision.

(5) A temporary permit holder who is applying for a license as a OTA/L may perform all of the functions of a OTA/L, with the exception of supervision.

Section 7. Audit of Supervision Activities. (1) The board shall perform a random audit of supervision logs for up to ten (10) percent of all licensees.

(2) The licensee who is audited **[**~~by~~**]** shall be required to furnish documentation of the completed supervision log required by Section 3(7) of this administrative regulation.

(3) The licensee **who[**~~that~~**]** is audited by the board shall respond to the audit within sixty (60) days of the date of the request.

(4) A licensee **who[**~~that~~**]** fails to comply with the supervision requirements of this administrative regulation shall be subject to disciplinary action that may include suspension or revocation of the person's license.

KELLY NASH, Chairperson

APPROVED BY AGENCY: June 14, 2010

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

CONTACT PERSON: Frances Short, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602; phone (502) 564-4233; fax (502) 564-4818.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2010)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," **November 9[**~~September 13~~**]**, 2010[~~December 8, 2009~~], are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended 12/08/09)
1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
2.1 Inmate Canteen (Amended 2/15/06)
[~~2.2 Warden's Fund (Amended 10/14/05)~~]
3.1 Code of Ethics (Amended 07/09/07)
[~~3.3 Holding of Second Jobs by Corrections' Employees (Amended 5/15/08)~~]
3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)
3.9 Student Intern Placement Program (Added 9/13/2010)
3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10[~~8/25/09~~])
3.11 Drug Free Workplace Employee Drug Testing (Amended 9/13/10[~~07/09/07~~]
3.14 Employee Time and Attendance Requirements (Added 9/13/2010)
3.17 Uniformed Employee Dress Code (Amended 4/10/06)
[~~3.20 Communication and Recording Devices (Amended 8/25/09)~~]
3.23 Internal Affairs Investigation (Added 8/25/09)
4.4 Educational Assistance Program (Amended 8/25/09)
5.1 Research and Survey Projects (Amended 5/15/08)
6.1 Open Records Law (Amended 5/14/07)
8.2 Fire Safety (Amended 2/15/06)
8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)
9.6 Contraband (Amended 12/13/05)
9.8 Search Policy (Amended **11/9/10 [**~~9/13/10~~][~~1/9/07~~])
9.13 Transport to Court - Civil Action (Amended 07/09/07)
9.18 Informants (Amended 9/13/10[~~10/14/05~~])
9.19 Found Lost or Abandoned Property (Amended 10/14/05)
9.20 Electronic Detection Equipment (Amended 10/14/05)
10.2 Special Management Inmates (Amended 8/25/09)
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
11.4 Alternative Dietary Patterns (Amended 5/15/08)
13.1 Pharmacy Policy and Formulary (Amended 8/25/09)
13.2 Health Maintenance Services (Amended **11/9/10 [**~~9/13/10~~**]** [~~8/25/09~~])
13.3 Medical Alert System (Amended 10/14/05)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Amended 5/15/08)
13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
13.8 Substance Abuse Program (Amended **11/9/10 [**~~9/13/10~~**]** [~~5/15/08~~])
13.9 Dental Services (Amended 10/14/05)
13.10 Serious Infectious Disease (Amended 12/13/05)
13.11 Do Not Resuscitate Order (Amended 8/9/05)
13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
14.2 Personal Hygiene Items (Amended 9/13/10[~~10/14/05~~])
14.3 Marriage of Inmates (Amended 10/14/05)
14.4 Legal Services Program (Amended 07/09/07)
14.5 Board of Claims (Amended 10/14/05)
14.6 Inmate Grievance Procedure (Amended 5/15/08)
14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
15.1 Hair, Grooming and ID Card Standards (Amended 9/13/10[~~5/15/08~~])
15.2 Rule Violations and Penalties (Amended 9/13/10[~~11/15/06~~])
15.3 Meritorious Good Time (Amended 12/13/05)
15.4 Treatment Program Time Credit (Amended 12/08/09)
15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
15.6 Adjustment Procedures and Programs (Amended 10/14/05)
15.7 Inmate Account Restriction (Amended **11/9/10** [~~9/13/10~~**]** [~~8/25/09~~])
15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
16.1 Inmate Visits (Amended 8/25/09)
16.2 Inmate Correspondence (Amended **11/9/10 [**~~9/13/10~~**]** [~~5/15/08~~])
16.3 Inmate Access to Telephones (Amended 9/13/10[~~5/15/08~~])
16.4 Inmate Packages (Amended 07/09/07)
17.1 Inmate Personal Property (Amended 8/25/09)
17.2 Assessment Center Operations (Amended 11/15/06)
17.3 Controlled Intake of Inmates (Amended 5/15/08)
17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
18.1 Classification of the Inmate (Amended 07/09/07)
18.2 Central Office Classification Committee (Amended 10/14/05)
18.5 Custody and Security Guidelines (Amended 5/15/08)
18.7 Transfers (Amended 07/09/07)
18.9 Out-of-state Transfers (Amended 2/15/06)
18.11 Placement for Mental Health Treatment in CPTU,

KCIW-PCU, or KCPC (Amended 1/9/07)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13 Population Categories (Amended 07/09/07)
18.15 Protective Custody (Amended 11/15/06)
18.16 Information to the Parole Board (Effective 11/15/06)
18.17 Interstate Agreement on Detainers (Amended 07/09/07)
18.18 International Transfer of Inmates (Amended 5/14/07)
19.1 Governmental Services Program (Amended 07/09/07)
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended 12/08/09)
20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
22.1 Privilege Trips (Amended 10/14/05)
23.1 Religious Programs (Amended 9/13/10[~~05/15/08~~])
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Prerelease Program (Effective 11/15/06)
25.4 Institutional Inmate Furloughs (Amended 07/09/07)
25.6 Community Center Program (Amended 07/09/07)
25.8 Extended Furlough (Amended 4/12/05)
25.10 Administrative Release of Inmates (Amended **11/9/10 [**~~9/13/10~~**]** [~~8/25/09~~])
25.11 Victim Services Notification (Amended 8/25/09)
26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: August 24, 2010
FILED WITH LRC: September 13, 2010 at 4 p.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2010)

501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Frankfort Career Development Center.

Section 1. Incorporation by Reference. (1) Frankfort Career Development Center policies and procedures, **November 9[**~~September 13~~**]**, 2010[~~March 11, 2004~~], are incorporated by reference. Frankfort Career Development Center policies and procedures include:

FCDC 01-04-01 Roles of Consultants, Contract Personnel, Volunteers, Employees, and Employees of Other Agencies (Amended 3/11/04)
FCDC 01-11-01 Use of Tobacco Products (Added 9/13/10)
[~~FCDC 01-09-01 Organization and Assignment of Responsibilities (Amended 1/13/03)~~
~~FCDC 02-02-01 Inventory Control (As Amended 5/11/04)~~]
FCDC 02-09-01 Inmate Accounts[~~Account~~] (Amended 9/13/10) [~~1/13/03)~~
~~FCDC 02-10-01 Fiscal Management and Control (As Amended 5/11/04)~~
~~FCDC 02-11-01 Fiscal Management: Accounting Procedures (Amended 1/13/03)~~
~~FCDC 02-12-01 Fiscal Management: Checking Accounts (Amended 3/11/04)~~
~~FCDC 02-13-01 Purchasing and Receiving (Amended 3/11/03)~~]
FCDC 02-14-01 Inmate Canteen (Added 9/13/10)
FCDC 05-01-01 Participation in Authorized Research and Use of Research (Added 9/13/10)
FCDC 06-01-01 Records Requests (Added 9/13/10)
FCDC 06-02-01 Offender Information Services[~~Records~~] (Amended 9/13/10[~~1/13/03~~])
FCDC 08-01-01 Fire Safety Practices (Amended 3/11/04)
FCDC 09-04-01 Inmate Death (Added 9/13/10)
FCDC 09-06-08 Searches and Contraband Procedures: Disposition of Contraband (Amended 11/14/95)
FCDC 09-11-01 Identification Card (Added 9/13/10)
FCDC 10-01-01 Temporary Holding Area (Added 9/13/10)
FCDC 11-03-01 Food Service; General Guidelines (**[**~~As~~**]**Amended **11/9/10[**~~9/13/10~~**]**)
FCDC 11-08-01 Inmate Work Schedule for Food Service (Added 9/13/10)[~~5/11/04~~
~~FCDC 11-04-02 Menu, Nutrition and Special Diets (Amended 3/11/04)~~
~~FCDC 11-06-01 Inspection and Sanitation (As Amended 5/11/04)~~
~~FCDC 11-07-01 Purchasing and Storage of Food Products (As Amended 5/11/04)~~]
FCDC 12-03-01 Laundry, Clothing, Hygiene and Grooming Services (Amended 4/15/02)
[~~FCDC 12-04-01 Safety and Sanitation Practices and Inspections (Amended 8/14/97)~~]
FCDC 13-01-01 Use of Pharmaceutical Products (Amended 4/15/02)
FCDC 13-01-02 Medical Emergencies and Medical Psychiatric Transfers (Amended 4/15/02)
FCDC 13-01-03 Informed Consent (Amended 9/13/10)
FCDC 13-01-04 Self Administered Medication (**Amended 11/9/10 [**~~Added 9/13/10~~**]**)[~~3/15/99)~~]
FCDC 13-02-01 Inmate Medical Screenings and Health Evaluations (Amended 9/13/10[~~3/11/04~~])
FCDC 13-03-01 Psychiatric and Psychological Services (Amended 4/15/02)
FCDC 13-05-01 Family Notification: Serious Illness, Injury, or Major Surgery[~~or Death~~](Amended 9/13/10)[~~11/14/95)~~
~~FCDC 13-06-01 Chronic and Convalescent Care (Amended 4/15/02)~~]
FCDC 13-08-01 Sick Call, Special Health Care Programs and Physician's [~~Weekly~~] Clinic (Amended 09/13/10[~~4/15/02~~])
FCDC 13-09-01 Management of Serious and Infectious Diseases (Amended 4/15/02)
FCDC 13-11-01 Health Education: Provision of Special Health Care Needs (Amended 4/15/02)
FCDC 13-13-01 Physicians Referrals (Amended 4/15/02)
FCDC 13-14-01 Health Records (Amended 9/13/10[~~3/15/99~~])
FCDC 13-15-01 Routine and Emergency Dental Appointments (Amended 9/13/10[~~4/15/02~~])
FCDC 13-16-01 Routine and Emergency Eye Examinations (Amended 9/13/10[~~4/15/02~~])
FCDC 14-01-01 Prohibiting Inmate Authority Over Other Inmates (Amended **11/9/10[**~~9/13/10~~**]**)
[~~FCDC 14-02-01 Inmate Grievance System (Amended 11/14/95)~~
~~FCDC 14-03-01 Inmate Rights and Responsibilities (Amended 1/13/03)~~]
FCDC 14-04-01 Legal Services Program (Amended **11/9/10) [**~~9/13/10~~**]**
FCDC 15-00-01 Operational Procedures and Rules for the Dormitory (**Amended 11/9/10[**~~Added 9/13/10~~**]**)[~~3/11/04)~~]
FCDC 15-01-01 Good Time Credits (Amended 4/15/02)

[~~FCDC 15-01-02 Restoration of Forfeited Good Time (Amended 1/13/03)~~
~~FCDC 15-03-01 Due Process and Disciplinary Procedure (Amended 1/13/03)~~]
FCDC 15-04-01 Detention Orders and Protective Custody Requests (Amended 8/14/97)
FCDC 16-01-01 Visiting (Amended 1/13/03)
FCDC 16-02-01 Inmate Correspondence (Amended 3/11/04)
FCDC 16-03-01 Inmate Access to Telephones (Amended 4/15/02)
FCDC 17-01-01 Inmate Property Control (Amended 3/11/04)
FCDC 17-02-01 Assessment and Orientation (Amended 3/11/04)
FCDC 18-01-01 Inmate Classification and Review (Amended 8/14/97)
FCDC 19-01-01 Security and Operation of the Governmental Services Program (Amended 9/13/10[~~3/11/04~~])
FCDC 19-02-01 Inmate Work Programs (Amended 3/11/04)
FCDC 20-01-01 Academic and Vocational Education (Amended 1/13/03)
FCDC 21-01-01 Library Services (**Amended 11/9/10[**~~Added 9/13/10~~**]**)
FCDC 22-01-01 Privilege Trips (Amended **11/9/10[**~~9/13/10~~**]**[~~4/15/02~~])
FCDC 22-02-01 Recreation and Inmate Activities (Amended 4/15/02)
FCDC 23-01-01 Religious Services (Amended 3/11/04)
FCDC 24-01-01 Social Services and Substance Abuse Programs[~~Program~~] (Amended 9/13/10)[~~3/11/04~~)
~~FCDC 24-02-01 Substance Abuse Programs (Amended 3/11/04)~~
~~FCDC 25-01-01 Escorted Leaves (As Amended 5/11/04)~~]
FCDC 25-03-01 Release Preparation Program (Amended 4/15/02)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~Office of Legal Services,~~] Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd floor[~~Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400~~], Frankfort, Kentucky 40601 [~~40602-2400~~], Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: September 13, 2010
FILED WITH LRC: September 13, 2010 at 4 p.m.
CONTACT PERSON: Jonathan Milby, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, November 9, 2010)

502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.500-17.540, 42 U.S.C. 14071[~~42 U.S.C. 1407~~]
STATUTORY AUTHORITY: KRS 15A.160, 17.500(6), **17.510,** 17.520(5), 42 U.S.C. 14071[~~17.080, 17.500(3), 17.510, 42 U.S.C. 1407~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.510 and 42 U.S.C. 14071[~~1407~~] require the Justice **and Public Safety** Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing Official[~~witness~~]" means an official identified in KRS 17.510(3), (4), and (5).
(2) "Cabinet" is defined in KRS 17.500(2)[~~at KRS 17.500(1)~~].
(3) "Department" means the Department of Kentucky State Police.
(4) "LINK" means the Law[~~Enforcement~~] Information Network of Kentucky.
(5) "NCIC" means the National Crime Information Center[~~Computer~~].
(6) "Registrant" is defined by KRS 17.500(5).
(7) "Registrant information" means the specific information set forth in KRS 17.500(6) as well as the name and address of any place where the registrant is a student.
(8) "SOR" means the Sex Offender Registry.[~~"SORS" means the Sex Offender Registration System.~~
~~(7) "Sex offender" means a person meeting one (1) of the criteria of KRS 17.510(2), (6), or (7)).~~
~~(8) "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:~~
~~(a) The date of release from custody;~~
~~(b) Maximum date of sentence or supervision, whichever is longer;~~
~~(c) Date of registry expiration;~~
~~(d) Name of person completing the form, if registrant is assisted;~~
~~(e) Office phone number of the releasing entity;~~
~~(f) Signature of the registrant;~~
~~(g) Signature of the authorizing witness;~~
~~(h) The date the form is signed;~~
~~(i) Fingerprints; and~~
~~(j) Photograph~~].

Section 2. Sex Offender Duty to Register Notification Form. (1) A registrant[~~sex offender~~] shall provide the[~~sex offender~~] information required to complete[~~on~~] the Sex Offender Duty to Register Notification Form #P:227[~~#JC-4~~].
(2) Completion of Sex Offender Duty to Register Notification Form #p:227[~~#JC-4~~].
(a) The Division of Probation and Parole shall complete the Sex Offender Duty to Register Notification Form #P:227[~~#JC-4~~] for the sentencing court.
(b) A registrant[~~sex offender~~] shall, in the presence of the sentencing judge, sign the Sex Offender Duty to Register Notification Form #P:227 on the registrant's signature line, in ink.[~~#JC-4 in the "defendant's signature" block, in ink.~~]
(c) A copy of the completed form shall be provided to the registrant[~~offender~~].

Section 3. Kentucky Sex Offender Registrant Responsibility Form **if Registrant is Incarcerated**. (1) If incarcerated, a registrant shall provide the information required to complete Kentucky Sex Offender Registrant Responsibility form.
(2) Completion of Kentucky Sex Offender Registrant Responsibility form.
(a) An authorizing official shall complete the Kentucky Sex Offender Registrant Responsibility form.
(b) A registrant shall, in the presence of an authorizing official, sign the Kentucky Sex Offender Registrant Responsibility form on the inmate signature line, in ink.
(c) An authorizing official shall sign and date the Kentucky Sex Offender Registrant Responsibility form in ink.

Section 4. SOR[~~SORS~~] Registration Forms. (1) The following[~~Three (3)~~] Sex Offender Registry[~~Entry~~] Forms have been established:
(a) The Kentucky Sex Offender Registry Entry and Modification Form #P:225 shall[~~is to~~] be completed by all persons required to register pursuant to KRS 17.510(2) as follows:
1. Persons initially registering with the Sex Offender Registry; and
2. Persons changing registrant information**; and[**~~.~~**]**
(b) The Kentucky Sex Offender Registry Move-In Form (#P:226) shall be completed by all parties required to register pursuant to KRS 17.510(6) or (7). [~~Sex Offender Registry Entry Form #P:227 is to be completed by all persons required to register pursuant to KRS 17.510(6).~~
~~(c) Sex Offender Registry Entry Form #P:228 is to be completed by all persons required to register pursuant to KRS 17.510(7).~~]
(2) Completion of the #P:225 and the P#:226.[~~Sex Offender Registry Entry Registration Form~~].
(a) The #P:225 and #P:226, as appropriate,[~~Entry Form~~] shall be completed either in the presence of or by the authorizing official

and shall include:

1. The date of release from custody;

2. Maximum discharge date of supervised release, or serve out date, whichever is later;

3. Initial date of registry expiration;

4. Name of person completing the form, if registrant is assisted;

5. Office phone number of the releasing entity; and

6. The date the form is signed[~~witness~~].

(b) The registrant[~~offender~~] shall read the #P:225 or #P:226, as appropriate,[~~Entry Form~~] in the presence of the authorizing official[~~witness~~].

(c) The registrant[~~offender~~] shall sign the #P:225 or #P:226, as appropriate, on the registrant's signature line[~~Entry Form, in the "signature of offender" block~~] of the form in ink.

(d) The authorizing official[~~witness~~] shall sign the #P:225 or #P:226, as appropriate, on the authorizing official signature line[~~Entry Form, in the "signature of offender" block~~]of the Entry Form~~~~].

(e) The authorizing official[~~witness~~] shall mail one (1) copy of the completed #P:225 or #P:226[~~Entry Form~~] to the department on the day the form is completed.

(3) A #P:225 or #P:226[~~An Entry Form~~] shall not be considered complete if:

(a) It does not contain the registrant[~~sex offender~~] information required by KRS 17.500(6)[~~17.500(3)~~] and this administrative regulation;

(b) It contains erroneous or false information;

(c) An item on the[~~Entry~~] form cannot be read or understood; or

(d) The registrant[~~offender~~] or authorizing official[~~witness~~] fails to sign the appropriate line[~~block~~].

(4) If the department determines that a #P:225 or #P:226[~~an Entry Form~~] is incomplete, the department shall notify the submitting authorizing official[~~witness, without entry into the SORS~~], of:

(a) The reason the #P:225 or #P:226[an Entry Form] Entry Form was determined to be incomplete; and

(b) The action required to complete the #P:225 or #P:226[~~the Entry Form prior to inclusion in the SORS~~].

(5) When the deficiencies of an incomplete #P:225 or #P:226[~~Entry Form~~] are corrected, the department shall enter the corrected information[~~record~~] into the SOR[~~SORS~~], LINK and NCIC.

(6) The department shall enter correct information from an incomplete #P:225 or #P:226 into SOR, LINK, and NCIC.[~~Section 4. Sex Offender Registry Modification Form. A sex offender shall complete a Sex Offender Registry Modification Form #P:226 if there is a change in an item of the sex offender information previously supplied.~~

~~(1) Completion of Sex Offender Registry Modification Form.~~

~~(a) The Modification Form shall be completed either in the presence of or by the authorizing witness.~~

~~(b) The offender shall read the Modification Form in the presence of the authorizing witness.~~

~~(c) The offender shall sign the Modification Form in the "signature of offender" block of the form, in ink.~~

~~(d) The authorizing witness shall sign the Modification Form in the "authorizing witness" block of the Modification Form.~~

~~(e) The authorizing witness shall mail one (1) copy of the completed Modification Form to the department on the day the form is completed.~~

~~(2) A Modification Form shall not be considered complete if:~~

~~(a) It does not contain the information required;~~

~~(b) It contains erroneous or false information;~~

~~(c) An item on the form cannot be read or understood; or~~

~~(d) The offender or authorizing witness fails to sign in the appropriate block.~~

~~(3) If the department determines that a Modification Form is incomplete, the department shall notify the submitting authorizing witness of:~~

~~(a) The reason the Modification Form was determined to be incomplete; and~~

~~(b) The action required to properly complete the Modification Form before that information shall be included in the SORS.~~

~~(4) When the deficiencies of an incomplete Modification Form are corrected, the department shall enter the corrected information into that offender's SORS, LINK, and NCIC records.~~]

Section 5. Sex Offender Registry Address[~~Information~~] Verification Forms[~~Form~~]. A registrant[~~sex offender~~] shall verify the accuracy of the registrant information contained in the appropriate[~~SORS on the~~] Sex Offender Registry Address[~~Information~~] Verification Form (#SOR 1T, #SOR 1L, #SOR 1WL, and #SOR 1WT) mailed to him or her by the department[~~#SOR 1~~].

(1) Annually, the department shall mail, during the birth month[~~no later than fourteen (14) days prior to the anniversary date~~] of each ten (10) or twenty (20) year[~~"low" and "moderate" risk~~] registrant that resides in Kentucky, an Address[~~, a~~] Verification Form #SOR 1T[~~1~~] to the last known address of the registrant.

(2) Annually, the department shall mail, during the birth month of each ten (10) or twenty (20) registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WT) to the last known address of the registrant.

(3) At least once every ninety (90) days, the department shall mail an Address Verification Form (#SOR 1L) to the last known address of each lifetime registrant that resides in Kentucky.

(4) At least once every ninety (90) days, the department shall mail to the last known address of each lifetime registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WL).

(5)[~~Quarterly, the department shall mail a Verification Form #SOR 1 to the last known address of each "high risk" registrant.~~

~~(3)~~] Completion of Sex Offender Registry Address[~~Information~~] Verification Forms. A registrant shall[~~Form #SOR 1. A sex offender shall~~]:

(a) Complete each item in the Address Verification Form[~~#SOR 1~~];

(b) Sign the Address Verification Form on the signature line[~~#SOR 1 in the "registrant signature" block,~~] in ink; and

(c) Mail the completed Address Verification Form[~~#SOR 1~~] to the department on the day the form is completed.

(6)[~~(4)~~**]** An Address[~~A~~] Verification Form[~~#SOR 1~~] shall not be considered complete if:

(a) It does not contain the information required;

(b) It contains erroneous or false information;

(c) An item on the form cannot be read or understood; or

(d) The registrant fails to sign on[~~in~~] the appropriate line[~~block~~].

(7)[~~(5)~~**]** If the department determines that an Address[~~a~~] Verification Form [~~#SOR 1~~] is incomplete, the department shall return the form to the submitting registrant, notifying the submitting registrant of:

(a) The reason the Address Verification Form[~~#SOR 1~~] was returned; and

(b) The action required by the registrant to properly complete the Address Verification Form [~~#SOR 1~~] prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following **material is [**~~forms are~~**]** incorporated by reference:

(a) **"**Sex Offender Duty to Register Form #P:227**"**, June 2006[~~#JC-~~4];

(b) **"**Sex Offender Registry Entry and Modification Form #P:225**"**, June 2006;

(c)[~~(c) Sex Offender Register Entry Form #P:227;~~

~~(d) Sex Offender Register Entry Form #P:228;~~

~~(e)~~ **"**Sex Offender Registry Move-In[~~Modification~~] Form #P:226**"**, June 2006;

(d)[~~and~~

~~(f)~~] **"**Sex Offender Registry Address[~~Information~~] Verification Form #SOR 1T**"**, May 2009;

(e) **"**Sex Offender Registry Address Verification Form #SOR 1L**"**, May 2009;

(f) **"**Sex Offender Registry Address Verification Form #SOR 1WT**"**, May 2009;

(g) **"**Sex Offender Registry Address Verification Form #SOR 1WL**"**, May 2009; and

(h) **"**Kentucky Sex Offender Registrant Responsibility Form**"**, July 2006.[~~1.~~]

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J. MICHAEL BROWN, Secretary
APPROVED BY AGENCY: September 9, 2010
FILED WITH LRC: September 10, 2010 at 3 p.m.
CONTACT PERSON: Emily M. Perkins, Kentucky State Police 919 Versailles Rd., Frankfort, Kentucky 40601, (502) 695-6391, Emilym.perkins@ky.gov.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(As Amended at ARRS, November 9, 2010)

601 KAR 9:205. Titling of all-terrain vehicles.

RELATES TO: KRS 186.020(1), 186A.055, 186A.070, 186A.074, 186A.130, 186A.165, 186A.170, 186A.195, 186A.215, 186A.245, 189.010
STATUTORY AUTHORITY: KRS 186A.074(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.074(3) requires the cabinet to promulgate administrative regulations governing the titling procedures for all–terrain vehicles. This administrative regulation establishes the procedures necessary for an applicant to obtain a certificate of title for an all-terrain vehicle.

Section 1. Application for Certificate of Title. (1) The owner of **an all-terrain vehicle purchased after July 1, 2010 or on which a security interest is created after July 1, 2010[**~~a motor vehicle that meets the definition of "all-terrain vehicle" as established in KRS 189.010(24)~~**]** shall apply for a certificate of title as follows:

(a) The applicant shall complete an Application for Kentucky Certificate of Title or Registration, TC Form 96-182, as incorporated by reference in 601 KAR 23:010.

(b) The applicant shall submit the completed form with supporting documents and a fee of fifteen (15) dollars to the county clerk of residence as established in KRS 186A.130(4).

(c) Nothing in this administrative regulation shall prevent the owner of an all-terrain vehicle purchased prior to July 1, 2010 and on which there is no security interest from applying for a certificate of title as established in this section.

Section 2. Processing Title. (1) The county clerk of residence shall process the title application and prepare a transmittal record to be sent to the Department of Vehicle Regulation as provided in KRS 186A.165.

(2) The Department of Vehicle Regulation shall review and process the application for title and the supporting documents as established in KRS 186.020 and 186A.170.

(3) If the application is approved by the Department of Vehicle Regulation, a certificate of title shall be issued to the applicant as established in KRS 186A.170(8).

Section 3. Security Interest. A security interest in an all-terrain vehicle shall be noted on the certificate of title as required in KRS 186A.195.

Section 4. Transfer of Title. The owner of an all-terrain vehicle shall transfer vehicle ownership as established in KRS 186A.215.

Section 5. Duplicate Title. The owner of an all-terrain vehicle shall obtain a duplicate certificate of title as provided in KRS 186A.130 and 186A.245.

T.O. ZAWACKI, Commissioner
MIKE HANCOCK, Acting Secretary
APPROVED BY AGENCY: September 7, 2010
FILED WITH LRC: September 9, 2010 at 10 a.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
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 9, 2010)

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

RELATES TO: KRS 160.345(8)
STATUTORY AUTHORITY: KRS 156.070(4), 160.345(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.345(8) requires that the Kentucky Board of Education **promulgate an[**~~adopt a formula by~~**]** administrative regulation which establishes a formula by which school district funds shall be allocated to each school council. This administrative regulation establishes the school council allocation formula for use by local school districts utilizing the Kentucky Education Technology System (KETS) District Administrative System Chart of Accounts per 702 KAR 3:120.

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority and are not in the general fund.

(2) "**District average certified teacher's salary" means the dollar value determined by dividing paragraph (a) of this subsection by paragraph (b) of this subsection, with:**

(a) Equal to the total of all salaries paid to certified personnel working noncategorical programs in the district for 185 days or a different number of days as required by the General Assembly; and

(b) Equal to the total number of certified personnel working in non-categorical programs in the district[~~"District average teacher's salary" means the total of all teacher salaries for 185 days or the number of contract days as otherwise required by the Kentucky General Assembly within a biennial budget in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district~~**]**.

Section 2. **(1)** The local school district shall provide notice to school councils of a tentative[~~an~~] allocation by March 1 and notice of an updated allocation by May 1 of each year for the funds and positions identified in Sections 4, 5, 6, and 8 of this administrative regulation for the next budget year [~~by March 1 of each year~~] in accordance with this administrative regulation.

(2) The local school district shall provide to school councils an allocation pursuant to Section 7 of this administrative regulation for the next budget year by May 30 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils using only the general fund and by excluding the following proposed district-wide expenditures from the general fund proposed budget for the year being allocated:

(1) **[**~~Function 1XXX,~~**]**Function 1200, Home and hospital**;[**~~,~~**]**

(2) **[**~~Function 1XXX,~~**]**Function 1700, Expelled or suspended**;[**~~,~~**]**

(3) **[**~~Function 1XXX,~~**]**Function 1900, Other instructional programs**;[**~~,~~**]**

(4)[~~(3)~~] Function 2110-2190[~~2100~~], Student support services, except for school-based employees and specified supplies**;[**~~,~~**]**

(5)[~~(4)~~] Function **22XX,[**~~221X,~~**]**[~~2210, Instructional staff support services~~], improvement of instruction**;[**~~, central office staff and supplies only~~**][**~~,~~**]**

(6)[~~(5)~~] Function 23XX[~~2300~~], District administrative[~~administration~~] support services**;[**~~,~~**]**

(7)[~~(6)~~] Function 25XX[~~2500~~], Business support services**;[**~~,~~**]**

(8)[~~(7)~~] Function 26XX[~~2600~~], Plant operation and maintenance**;[**~~, except for school-based employees~~**][**~~,~~**]**

(9)[~~(8)~~] Function 27XX[~~2700~~], Student transportation**;[**~~,~~**]**[~~(9) Function 2800, Central Office support services.~~]

(10) Function 3XXX[~~3000~~], Noninstructional services**;[~~.~~]**

(11) Function 4XXX[~~4000~~], Facilities acquisition and construction services**;[~~.~~]**

(12) Function 5XXX[~~5000~~], Other**; and[~~.~~]**

(13) All expenditures for extra duty and extended employment, exceptional children services, itinerant teachers, and fringe benefits in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions **for certified staff** for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps and pupil contact hours established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Any revisions of staffing policy or guidelines for the next school year shall be adopted by the local board and submitted to the Kentucky Department of Education[~~Division of Instructional Leadership Development~~] by May 1[~~March 1~~] of each year.

(3) Funds for positions allocated in subsection (1) of this section shall be based on the previous year's actual 185 day **certified** salary or the number of contract days as otherwise required by the Kentucky General Assembly within a biennial budget adjusted by changes in rank, additional **years[~~year~~]** of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary **[~~or the number of days as otherwise directed by the Kentucky General Assembly~~]** adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the **district average certified teacher's [~~certified district average~~]** salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. A council shall be notified of an adjustment if the adjustment represents a change in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines for the next school year shall be adopted by the local board and established to determine the number of allocated positions **for classified staff** for each school. Any revisions of staffing policy or guidelines shall be submitted to the Kentucky Department of Education[~~Division of Instructional Leadership Development~~] by May[~~March~~] 1 of each year.

(2) Funds shall be provided for all school-based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class for noncategorical staff adjusted for any district-wide increase.

(4) If the actual salary of new classified personnel is less than ninety-five (95) percent of the **district's average** classified **[~~district average~~]** salary for the personnel job class, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(5) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. A council shall be notified of an adjustment if the adjustment represents a change in staffing due to enrollment increases or decreases.

Section 6. Other Minimum Allocations. (1) School councils shall receive a minimum allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year final average daily attendance.

(2) The amount generated in subsection (1) of this section shall be adjusted at the end of the second school month for changes in average daily attendance and projected funding for SEEK.

(3) Allocations for operating expenses, including utilities, or for health and safety requirements of schools shall not be included in the allocations required by Sections 4, 5, 7, or 8 of this administrative regulation or this section. If funds are given to a school for these purposes, the funds shall be distributed in a separate allocation.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed by the local board in one (1) of the following manners:

(a) An amount per prior year final average daily attendance;

(b) Based on pupil needs identified by school councils in their adopted school improvement plans and designated by the local school board. Money provided under this **paragraph[~~subsection~~]** shall be used only for the needs identified by the council from its adopted school improvement plan and designated by the board;

(c) For specific instructional purposes based on student needs identified by the board from disaggregated student achievement data. Money provided under this paragraph shall be used by the council to address only the identified needs; or

(d) A combination of paragraphs (a), (b), and (c) of this subsection.

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the second school month for changes in average daily attendance and projected funding for SEEK, and changes in the projections for prior year, end-of-year balances.

(3) If the allocations in Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. **(1)** A tentative amount for professional development shall be allocated within thirty (30) days of notification from the Kentucky Department of Education, pursuant to KRS 160.345(8).

(2) The amount allocated shall be equal to at least the minimum requirement multiplied by the average daily attendance from the prior school year.

(3) The amount of professional development allocation shall be amended by September 15 to reflect the most recent annual average daily attendance.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets.

Section 10. A school council allocation by the district shall not result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. **[~~The provisions of this administrative regulation notwithstanding,~~]** A district shall not be prohibited from passing on to school councils any reduction in state and local revenues.

Section 12. **(1)** The Kentucky Board of Education may approve requests from local school districts annually to use an alternative formula to allocate funds to schools.

(2) A local school district requesting approval to use an alternative process shall submit written documentation that the formula would generate funding equal to or greater than the amount provided to school councils under Section 3 of **this[~~the~~]** administrative regulation.

(3) All requests shall be received by the **Kentucky Department of Education[**~~Division of School Finance~~**]** by October 1 preceding the allocation year.

(4) Any alternative process approved by the Kentucky Board of Education shall be subject to subsequent review.

Section 13. Under Sections 4 and 5 of this administrative regulation, the funds allocated for staff positions shall be exactly the amounts permitted by the board policies or guidelines required in those sections.

TERRY HOLLIDAY, Ph.D., Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: April 15, 2010
FILED WITH LRC: April 15, 2010 at 10 a.m.
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 CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 9, 2010)

702 KAR 5:110. Vocational pupils, reimbursement for.

RELATES TO: KRS 157.370
STATUTORY AUTHORITY: KRS 156.070, 157.370(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.370(8) requires a local board of education to be reimbursed separately for the cost of transporting pupils from a parent school to a vocational-technical school or to a vocational education center, and requires the Board of Education to promulgate an administrative regulation establishing the reimbursement amount. This administrative regulation establishes the reimbursement requirements and limitations for those districts that transport secondary school pupils.

Section 1. **Definition. "Vocational school" means a state vocational-technical school, an area vocational education center, or a vocational training site.**

Section 2. A local district may provide bus transportation for the district's secondary school pupils from their parent school to a vocational school **[**~~(e.g., a state vocational-technical school, an area vocational education center, or to a vocational training site)~~**]** where an integral part of the basic vocational instructional program is being provided.

Section **3. A district providing transportation to a vocational school shall submit a request for reimbursement by submitting a completed Form VT-2, District's Annual Claim to Receive Reimbursement for Pupil Transportation Vocational Schools, annually on or before June 30 of the current school year to the Office of District Support Services in the Department of Education.[**~~2.~~**]**[~~An application showing anticipated transportation of pupils to a vocational school for which reimbursement is to be claimed shall be submitted to the Office of District Support Services for approval on or before October 1 of the current school year.~~

~~Section 3.~~] **[**~~A request for reimbursement for transportation to a vocational school shall be the responsibility of the district providing the transportation.~~

~~Section 3.~~][~~4.~~]**[**~~A request for reimbursement for actual transportation to a vocational school shall be made on an annual basis on or before June 30 of the current school year to the Office of District Support Services in the Department of Education.~~**]**

Section 4.[~~5. Tentative~~] Funding in the current year shall be based upon information submitted on district applications[~~. Any necessary adjustments shall be made in the following year~~] based on the actual transportation provided.

Section 5.[~~6.~~] A local district that transports pupils to a vocational school on buses owned and operated by the district shall be reimbursed for these expenditures as follows:

(1) Bus mileage at a rate not to exceed the average cost per bus mile for county school districts, exclusive of driver's cost, as calculated by the Office of District Support Services for the previous school year; and

(2) The vocational school bus driver's cost at an hourly rate not to exceed the hourly rate paid by the district to a driver in the district's regular transportation program with similar qualifications.

Section 6.[~~7.~~] If a district's pupils are transported to a vocational school over a toll road as the nearest or best route, either on a board-owned bus or a bus contracted to the board, the district shall be reimbursed for the toll road fee in addition to mileage and driver's cost.

Section 7.[~~8.~~] (1) A district that contracts for the transportation of its pupils to a vocational school shall be reimbursed an amount not to exceed the total amount that would result if:

(a) The vocational school bus mileage is multiplied by the average cost per bus mile for county districts exclusive of driver's cost; and

(b) The driver's total hours are multiplied by the average hourly rate paid by county school districts plus necessary toll road fees.

(2) The average mileage cost and average hourly rate shall be those calculated by the Office of District Support Services for the previous school year.

Section 8.[~~9.~~] (1) Bus mileage shall be calculated from the parent school to the vocational school over the nearest and best route. If the same bus is used to transport pupils to a vocational school from more than one (1) school within the same district, bus mileage shall be calculated from the school located farthest from the vocational school over the nearest and best route as the bus serves the other schools en route to the vocational school.

(2) A bus round trip shall be considered the transportation of the student to and from a vocational school.

(a) A bus driver transporting students on a bus from a high school to a vocational school and returning back without the students to the high school shall be considered to have made half of a round trip.

(b) [~~Similarly,~~**]** A bus driver departing from the high school without the students, going to the vocational school and returning back to the high school with the students shall be considered to have made half of a round trip.

Section 9. **(1)**[~~10.~~] The total hours of **a** driver's pay per day that **shall[**~~will~~**]** be reimbursed for transporting pupils to a vocational school shall be calculated on the basis of what the driver does while the pupils are in class at the vocational school as follows:

(a)[~~(1)~~**]** If the driver waits at the vocational school for the full time that the pupils are in class, the driver's time shall start when the bus leaves the parent school farthest from which pupils are transported to the vocational school and shall stop when the pupils are returned to the farthest parent school; **or**

(b)[~~(2)~~**]** If the driver unloads the pupils at the vocational school, then takes the bus to another location and returns to pick up the pupils when the classes are finished, the first half of the drivers time shall start when the bus leaves the parent school farthest from the vocational school and **shall end[**~~ends~~**]** when the driver reaches the point where the bus is parked until time to make the bus trip to the vocational school to return the pupils to their parent school. The second half of the driver's time shall start when the bus leaves the point where the bus was parked and **shall end[**~~ends~~**]** when the bus reaches the parent school farthest from the vocational school**.[**~~; and~~**]**

(2)[~~(3) If possible or practical,~~**]** The district shall pay the bus driver by the method that results in the least cost when the driver's time and the required bus mileage are considered in combination.

Section 10.[~~11.~~] The driver of the bus that transports pupils to a vocational school shall meet the same requirements as the district's bus drivers that transport pupils to the district's public schools.

Section 11.[~~12.~~] A school district shall be reimbursed for the cost of vocational school transportation for the actual number of days that pupils were transported to the vocational school not to exceed the number of instructional days in the school district's approved amended calendar [~~up to a maximum of 175 days per school year~~].

Section 12. **(1)**[~~13.~~] One (1) district may make a contract with another district to transport the other district's pupils to a vocational school on the same bus with the transporting district's pupils or on a separate bus.

(2)[~~Section 13.~~**]**[~~14.~~] If one (1) district contracts to provide a bus or buses to transport another district's pupils to a vocational school, the district providing the bus or buses shall claim additional reimbursement only for the extra bus miles required and the extra hours of bus driver time required to provide this service for the other district.

Section **13.[**~~14.~~**]**[~~15.~~] A district shall make maximum use of the bus that transports pupils to a vocational school through planning and routing. The use of more than one (1) bus for transporting pupils from any school or group of schools to a vocational school shall be approved only if the length of time required for one (1) bus to pick up and transport the pupils would be impractical or the number of pupils on one (1) bus would exceed seating capacity.

Section **14.[**~~15.~~**]**[~~16.~~] A district shall not be reimbursed for**:**

(1) The transportation of vocational school pupils on field trips, excursions, competitions, or recreational trips**; or**

(2)[~~.~~

~~Section 16.~~**]**[~~17.~~]**[**~~ A district shall not be reimbursed for~~**]** The vocational transportation from the parent school to the vocational school if the vocational school is on the same grounds or on adjacent grounds to the parent school or within one-half (1/2) mile of the parent school.

Section 15. Incorporation by Reference. (1) "Form VT-2, District's Annual Claim to Receive Reimbursement for Pupil Transportation Vocational Schools", November 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of District Support Services, Department of Education, 15th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TERRY HOLLIDAY, Ph.D., Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2010
FILED WITH LRC: June 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, November 9, 2010)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. **361.5(b)(11),** 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 certification 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 **if[**~~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 **shall[**~~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; **and**

(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) A qualified rehabilitation counselor determines that failure to provide the modification will preclude the successful achievement of the employment goal; [~~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, whichever is less, 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 **when the home or property was purchased [**~~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 **shall[**~~must~~**]** be approved, in writing by the rehabilitation technology specialist**; and[**~~.~~**]**

(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: November 15, 2010

FILED WITH LRC: September 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 Employment and Training
(As Amended at ARRS, November 9, 2010)

787 KAR 1:320. Priority of deductions from benefits.

RELATES TO: KRS **341.390, 341.392,** 341.395, **341.415,** 26 U.S.C. 3304[~~Pub.L. 103-465, Sec. 702(b)~~]

STATUTORY AUTHORITY: KRS 151B.020**(6)[**~~(8)~~**]**, 341.115, 341.395(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.395(4) provides that amounts shall be deducted and withheld from unemployment benefit payments in accordance with priorities established in **an** administrative regulation by the secretary. 26 U.S.C. 3304[~~Pub.L. 103-465, Sec. 702(b)~~] requires that federal individual income tax from unemployment compensation be deducted and withheld if an individual receiving this compensation voluntarily requests the deduction and withholding. This administrative regulation establishes the priority of deductions from benefits.

Section 1. If deductions and withholding from benefit payments are required under more than one (1) statute or for more than one (1) purpose, the priority for deduction shall be as follows:

(1) Deduction of wages, remuneration in lieu of notice, and pension compensation as required under KRS 341.390;[.]

(2) Deduction for recoupment of a previous overpayment as required under KRS 341.415;[.]

(3) Child support obligations as required under KRS 341.392;[.]

(4) Any other mandatory deduction imposed under a federal or Kentucky statute or administrative regulation; and

(5) Voluntary withholding of income tax requested by a claimant as provided:

(a) Under KRS 341.395 for federal income tax; or

(b) Under 103 KAR 18:070 for state income tax [~~under KRS 341.395~~].

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: September 13, 2010

FILED WITH LRC: September 14, 2010 at 10 a.m.

CONTACT PERSON: William Monterosso, Executive Director, Office of Employment and Training, 275 East Main, 2C; Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:400. Adoption of 29 C.F.R. 1926.1-29, 1926.4, 1926.6 [~~Part 1926.1-4~~]

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS **338.051, 338.061 [**~~Chapter 13A~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 require[~~authorize~~] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. [~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.1-4, revised July 1, 2010; and

(2) The addition of Section 29 C.F.R.1926.6 as published in the August 9, 2010 Federal Register Volume 75, Number 152. [~~The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.1-.4 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 C.F.R. Part 1926.1 shall read as follows: The provisions of this administrative regulation incorporate and extend the applicability of established federal standards contained in 29 C.F.R. Part 1926 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:412. Fall protection.

RELATES TO: KRS 338.015, 338.031, 338.051, 338.061, 29 C.F.R. 1926.500-1926.503

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061(1) require[~~requires, and KRS 338.061(1)~~] authorizes,] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations.[~~KRS 338.061(2) authorizes the board to use established federal standards and national consensus standards in Kentucky.~~] This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance[~~office in the construction industry~~] relating to fall protection. This administrative regulation requires employers to comply with federal standards except for certain limited construction activities in which the fall protection trigger height is changed from six (6) feet to ten (10) feet. When engaged in those limited activities, employers may choose compliance options not provided in the federal standards.[~~Although this administrative regulation differs from the federal standards, it comports with federal enforcement policy.~~]

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Eave" means the horizontal lower edge of a roof.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Fall restraint system" means a system that:

(a) Is used to prevent an employee from falling any distance consisting of an anchorage, connectors, and body belt or harness; and

(b) May include lanyards, lifelines, or rope grabs designed for that purpose.

(6) "Guardrail system" is defined in 29 C.F.R. 1926.500(b).

(7) "Leading edge" is defined in 29 C.F.R. 1926.500(b).

(8) "Personal fall arrest system" is defined in 29 C.F.R. 1926.500(b).

(9) "Rake edge" means the roof edge at the gable end of a structure.

(10) "Residential construction" means construction work on a standalone single family dwelling, duplex, threeplex, or fourplex structure.

(11) "Roofing work" is defined in 29 C.F.R. 1926.500(b).

(12) "Safety monitoring system" is defined in 29 C.F.R. 1926.500(b).

(13) "Safety net system" means a system used in accordance with 29 C.F.R. 1926.502(c).

(14) "Slide guard system" means an equipment system that:

(a) Is designed to prevent employees from sliding off a sloped roof to a lower level; and

(b) Consists of manufactured roof brackets used in conjunction with dimensional lumber or may be a site-built system of similar

design and dimension.

(15) "Slope" means the roof vertical rise in inches for every horizontal twelve (12) inch length, with:

(a) The horizontal twelve (12) inch length referred to as the run;

(b) The slope referred to as pitch; and

(c) The slope expressed with the rise (vertical) mentioned first and the run (horizontal) mentioned second, such as "4 in 12" or "4 on 12" and written as "4 in 12" or "4:12" or "4/12."

(16) **[**~~"Standard" is defined in KRS 338.015(3).~~

~~(17)~~**]** "Three (3) points of contact" means either:

(a) One (1) hand and both feet; or

(b) One (1) foot and both hands.

(17)[~~(18)~~**]** "Visible defect" means saw cuts, warps, twists, holes, splits, breaks, or gouges.

(18)[~~(19)~~**]** "Walking/working surface" is defined in 29 C.F.R. 1926.500(b).

Section 2. (1) The construction industry shall comply with the following federal regulations, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1926.500 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2010;[~~2005; and~~]

(b) 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2010; and

(c) The amendment to 29 C.F.R. 1926.500 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.[~~2005.~~]

(2) An employer may utilize Appendices A, B, C, D, and E to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, except the Sample Fall Protection Plan for Residential Construction found in Appendix E.

(3) The Nonmandatory Sample Fall Protection Plan for Residential Construction may be used and is incorporated by reference in Section 4 of this administrative regulation.

Section 3. Residential Construction. (1) General.

(a) While engaged in residential construction activities, employees working ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section while exposed to any of the following:

1. Unprotected sides and edges;

2. Leading edges;

3. Hoist areas;

4. Form work and reinforcing steel; or

5. Roofing work on roof slopes three (3) in twelve (12) or less.

(b) The employer shall use a measure that meets the criteria established in this section and shall not be required to demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, or personal fall arrest systems before using a measure provided in this section.

(c) If an employer can demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, personal fall arrest systems, or a measure established in this section, for a particular workplace situation, the employer shall develop and implement a written fall protection plan which meets the requirements of 29 C.F.R. 1926.502(k) for a particular workplace situation in lieu of implementing guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section.

(2) Floor system.

(a) Employees engaged in residential construction floor system work exposed to a fall hazard ten (10) feet or more above a lower level to the exterior of the structure being constructed shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(b) Employees engaged in residential construction floor system work exposed to an interior fall hazard ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first joist or truss shall be placed into position and secured by workers on the ground, from ladders, or from a scaffold system.

2. Successive joists or trusses shall be placed into position and then secured from a secured temporary platform.

3. The temporary platform shall be at least eighteen (18) inches wide and secured.

4. An employee performing the work shall work from the platform and remain on the platform.

(c) Employees engaged in leading edge residential construction floor system work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, from a scaffold system, or from a secured temporary platform at least eighteen (18) inches wide.

2. An employee performing the work shall work from the platform and remain on the platform.

3. After the first row of sheathing has been installed and secured, only employees performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

4. After two (2) rows of sheathing have been installed, only an employee performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

5. All other employees shall remain at least four (4) feet away from the leading edge.

(3) Roof system.

(a) Employees engaged in residential construction roof truss or rafter work ten (10) feet or more above a lower level shall:

1. Be protected by guardrail systems, safety net systems, personal fall arrest systems; or

2. Personal fall restraint systems or implement the measure established in paragraph (b) of this subsection.

(b) The employee releasing the hoist line or installing the bracing shall:

1. Move or work from within the webbing of the truss or within the rafters on a secured temporary platform at least eighteen (18) inches wide; or

2. Maintain three (3) points of contact while moving or working within the webbing of the trusses or within the rafters.

(c) Employees shall not move or work outside the webbing of the trusses or outside the rafters unless utilizing a personal fall arrest system or personal fall restraint system.

(d) Employees engaged in roof sheathing may utilize a slide guard system in accordance with the provisions established in subsection (6) of this section.

(e) Employees engaged in residential construction attic work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or the measures established in this paragraph.

1. Employees shall move or work from within the webbing of the trusses or within the rafters on a secured temporary platform at least eighteen (18) inches wide.

2. Employees shall remain on the platform while performing the work.

(4) Roofing work.

(a) Supplies or materials shall not be placed or stored within six (6) feet of the roof edge.

(b) A person shall not ascend, work on, or descend the roof within six (6) feet of the rake edge except while applying or removing roofing materials or equipment.

(c) Warning line systems.

1. Employees engaged in residential construction roofing work ten (10) feet or more above a lower level on roof slopes three (3) in twelve (12) or less shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or a combination of warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, warning line system and

personal fall restraint system, or warning line system and safety monitoring system. On roofs fifty (50) feet or less in width, a safety monitoring system alone may be used. Appendix A to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, may be used as a guideline to determine roof width.

2. Employees performing residential construction roofing work between a roof edge and a warning line shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(5) Slide guard systems.

(a) Employers and employees installing residential construction roof sheathing with a ground to eave height up to twenty-five (25) feet or engaged in residential construction roofing work with a ground to eave height up to twenty-five (25) feet may utilize a slide guard system in accordance with the provisions established in this subsection with a safety monitor system meeting the requirements of 29 C.F.R. 1926.502(h)(1) through (h)(4).

(b) Slide guards systems shall not be used with a slope less than four (4) in twelve (12) or greater than eight (8) in twelve (12).

(c) Employers and employees installing residential construction roof sheathing who utilize a slide guard system shall install the slide guard system immediately after the first row of sheathing is installed.

(d) Slide guard systems shall comply with the following provisions.

1. Each slide guard system shall be installed, utilized, and removed under the supervision of a competent person**, as defined in 29 C.F.R. 1926.32(f)**.

2. Each slide guard system shall be used in accordance with the manufacturer's specifications, limitations, and recommendations.

3. Each slide guard system shall be maintained in accordance with the manufacturer's specifications and recommendations.

4. The manufacturer's specifications shall be available at the jobsite for review if the slide guard system is not utilized and maintained in accordance with this subsection.

5. Each slide guard system shall be inspected for visible defects by a competent person before each work shift and after any occurrence which could affect the slide guard system's structural integrity.

6. For each slide guard system, each damaged or weakened component shall be immediately replaced or repaired.

7. For each slide guard system, if replacement or repair of a damaged or weakened component is not feasible, work shall be suspended until:

a. The damaged or weakened component is replaced or repaired; or

b. Another form of fall protection is utilized.

8. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

9. Unless required otherwise by the manufacturer's specifications, all perpendicular slide guard members shall:

a. Be number two (2) or better construction grade lumber;

b. Have a minimum dimension of two (2) inches nominal by six (6) inches nominal;

c. Use lumber that is free from cracks or other visible defects; and

d. Use other type of material that meets the same dimensions and is equivalent in strength, with the engineering specifications available at the site for review.

10. All perpendicular slide guard members shall be secured to the brackets and protected against cantilevering or failure due to material flex.

11. All slide guard systems shall be on the same walking/working surface as the employee being protected.

12. A continuous slide guard system below the walking or working area shall be installed along the eave no closer than six (6) inches from the eave and remain in place until the work is completed.

13. Additional continuous slide guards systems shall be installed below each walking or working area no more than eight (8) feet apart vertically.

14. The additional slide guards shall be installed using the following procedure:

a. The employee, while standing on the slide guard below, shall secure the roof bracket, or jack, for the next slide guard;

b. The employee shall install and secure the next perpendicular slide guard member;

c. The employee shall then climb up to the new slide guard to continue work;

d. This sequence shall be repeated as work proceeds up the roof;

e. Once the work is complete and the slide guards are to be removed, the employee shall climb down to the next lower slide guard;

f. The employee shall remove the perpendicular slide guard member from the slide guard above;

g. The employee shall remove the roof brackets, or jacks, above;

h. The employee shall repeat the sequence down the roof; and

i. When all above slide guards have been removed, the slide guards at the eave shall be removed.

15. Manufactured roof brackets, or jacks, shall:

a. Be a minimum of six (6) inch brackets;

b. Be secured according to the manufacturer's specifications, limitations, and recommendations;

c. Bear on a solid surface so that all anchors penetrate the roof's surface and the rafter or truss below, unless specified otherwise by the manufacturer's specifications;

d. Not be spaced greater than eight (8) feet apart horizontally or according to the manufacturer's specifications, whichever is less; and**[,]**

e. Have the manufacturer's specifications available at the jobsite for review if the manufactured roof brackets, or jacks, are not utilized in accordance with the provisions established in this subparagraph.

16. Nonmanufactured, job, or site made slide guard systems shall comply with the provisions established in this subparagraph.

a. Horizontal members shall be anchored with a minimum of two (2) sixteen (16) "penny", or 16d, common nails at least every four (4) feet so that all nails penetrate the roof's surface and the rafter or truss below.

b. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

c. Horizontal and perpendicular members shall be number two (2) or better construction grade lumber and have a minimum dimension of two (2) inches nominal by six (6) inches nominal.

d. Perpendicular members shall be anchored to the horizontal members with a minimum of one (1) sixteen (16) "penny", or 16d, common nail at least every two (2) feet.

e. The perpendicular member shall be provided with support bracing at least every six (6) feet.

f. More than one (1) person shall not occupy any given eight (8) feet of a job made slide guard system.

g. Engineering specifications shall be available at the site for review if the design or installation does not meet the minimum specifications established in this subparagraph. An engineer's seal shall not be required. Engineering specifications shall establish that nonmanufactured, job, or site made slide guard systems shall be equivalent to a system constructed in accordance with the provisions established in this subparagraph.

Section 4. Incorporation by Reference. (1) A "Non-Mandatory Sample Fall Protection Plan for Residential Construction", August 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Labor, 1047 US Highway 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at www.labor.ky.gov. [~~Section 4. Incorporation by Reference. (1) A "Non-Mandatory Sample Fall Protection Plan for Residential Construction," August 2005, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Labor, 1047 US Highway 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at www.labor.ky.gov.~~]

J. R. GRAY, Chairman
APPROVED BY AGENCY: August 30, 2010
FILED WITH LRC: August 30, 2010 at 4 p.m.
CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 8, 2010)

803 KAR 2:414. Motor vehicles, mechanized equipment, and marine operations.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926
STATUTORY AUTHORITY: KRS 338.051(3), **338.061 [**~~3389.061, 29 C.F.R. 1926~~**]**
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires[~~authorizes~~] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations.[~~KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(2) "C.F.R." means Code of Federal Regulations.
(3) "Employee" is defined by KRS 338.015(2).
(4) "Employer" is defined by KRS 338.015(1).
(5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:
(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2010; and
(2) The revision of 29 C.F.R. 1926.600 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.[~~Incorporation by Reference. (1) The following material is incorporated by reference:~~
~~(a) Chapter 29, Part 1926.600-.606 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration;~~
~~(b) The revision to 29 C.F.R. 1926.602 "Material Handling Equipment", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.~~
~~(2) This material may be inspected, copied, or obtained at Kentucky Department of Labor, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m. (ET), Monday through Friday.~~]

J. R. GRAY, Chairman
APPROVED BY AGENCY: August 30, 2010
FILED WITH LRC: August 30, 2010 at 4 p.m.
CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:417. Steel erection.

RELATES TO: **KRS 338.015(1), (2),** 29 C.F.R. 1926.750-1926.761[~~, EO 2009-537~~]
STATUTORY AUTHORITY: KRS 338.051(3), 338.061**[**~~,~~**]**[~~EO 2009-537~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.750 to 1926.761 establish the federal requirements relating to steel erection.[~~EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes standards to be enforced by the Department of Workplace Standards in the construction industry relating to steel erection.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.
(2) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).
(3) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:
(1) 29 C.F.R. 1926.750 through 1926.761, and Appendices, revised July 1, 2010[~~2008~~]; and
(2) The amendment to 29 C.F.R. 1926.754 as published in the May 17, 2010 Federal Register, Volume 75, Number 94; and [~~1926.761 as published in the December 12, 2008 Federal Register, Volume 73, Number 240~~].

Section 3. Fall Hazards. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(1).
(b) Each employee engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge ten (10) feet or more above a lower level shall be protected from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems.
(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(3).
(b) Connectors and employees working in controlled decking zones shall be protected from fall hazards in accordance with subsections (5) and (6) of this section, respectively.
(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(1).
(b) Each connector shall be protected in accordance with subsection (2) of this section from fall hazards of ten (10) feet or more above a lower level.
(4)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(3).
(b) Each connector shall be provided with, wear, and utilize, at heights of ten (10) feet or more above a lower level, a personal fall arrest system, positioning device system, or fall restraint system; or be provided with other means of protection from fall hazards in accordance with subsection (1) of this section.
(5)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(c).
(b) A controlled decking zone (CDZ) may be established in that area of the structure over six (6) feet and up to ten (10) feet above a lower level if metal decking is initially being installed and forms the leading edge of a work area. In each CDZ, the following shall apply:
1. The language in subparagraph 2 of this paragraph shall

apply in lieu of 29 C.F.R. 1926.760(c)(1).

2. Each employee working at the leading edge in a CDZ shall be protected from fall hazards of ten (10) feet or more above a lower level.

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

RELATES TO: KRS **338.015(1), (2), (3),** 338.051, 338.061, 29 C.F.R. 1926.800-1926.804, 1926 Subpart S[~~A~~] App. A

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1926.800-1926.804 and Subpart S App. A establish federal requirements relating to underground construction, caissons, cofferdams, and compressed air. This administrative regulation establishes the underground construction, caissons, cofferdams, and compressed air standards to be enforced by the Division[~~Office~~] of Occupational Safety and Health in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).

(4) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).

(5) "Standard" **means "occupational safety and health standard" as defined by[**~~is defined in~~**]** KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.800 - 1926.804, and**[**~~29 C.F.R.~~**]** 1926 Subpart S, Appendix A, revised as of July 1, 2010; and

(2) The amendment to 29 C.F.R. 1926.800 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.[~~The construction industry shall comply with the requirements of 29 C.F.R. 1926.800 through 1926.804, and 29 C.F.R. 1926 Subpart S Appendix A, revised as of July 1.2006~~]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:419. Adoption of 29 C.F.R. Part 1926.850-860.

RELATES TO: KRS Chapter 338**, 29 C.F.R. 1926.850 - 860**

STATUTORY AUTHORITY: KRS **338.051(3), 338.061[**~~Chapter 13A~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS **338.051(3) and 338.061 authorize[**~~338.051 and 338.061 require~~**]**[~~authorize~~] the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health rules**,[**~~and~~**]** administrative regulations, and standards.[~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.~~]

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).

(4) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).

(5) "Standard" **means "occupational safety and health standard" as defined by[**~~is defined in~~**]** KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2010; and

(2) 29 C.F.R. 1926.856 and 1926.858 as amended and published in the August 9, 2010 Federal Register, Volume 75, Number 152.[~~The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.850-.860 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-960.

RELATES TO: KRS Chapter 338**, 29 C.F.R. 1926.950 - 960**

STATUTORY AUTHORITY: KRS 338.051**(3)**, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS **338.051(3) and 338.061 authorize[**~~338.051 and 338.061 require~~**]**[~~authorize~~] the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health rules, administrative regulations, and standards.[~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.[~~The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.~~]

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).

(4) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).

(5) "Standard" **means "occupational safety and health standard" as defined by[**~~is defined in~~**]** KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation and the requirements of **subsection (1) of this section[**~~Section (2)(a) of this administrative regulation~~**]**, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:[~~The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~]

(1) Amend subparagraph 1926.950(c)(1)(i) to read as follows: "The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves **if[**~~when~~**]** necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part**…";[**~~, or....~~**"]**

(2) 29 C.F.R. 1926.950-1926.960, revised as of July 1, 2010; and

(3) 29 C.F.R. 1926.952 as amended and published in the August 9, 2010 Federal Register, Volume 75, Number 152.[~~The revision to 29 C.F.R. 1926.951, "Tools and Protective Equipment", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. through 4:30 p.m., Monday through Friday.~~]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:423. Adoption of 29 C.F.R. Part 1926.1050-1060.

RELATES TO: KRS Chapter 338**, 29 C.F.R. 1926.1050 - 1060**

STATUTORY AUTHORITY: KRS **338.051(3), 338.061[**~~Chapter 13A~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS **338.051(3) and 338.061 authorize[**~~338.051 and 338.061 require~~**]**[~~authorize~~] the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health rules**, [**~~and~~**]**administrative regulations, and standards.[~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.[~~The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.~~]

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).

(4) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).

(5) "Standard" **means "occupational safety and health standard" as defined by[**~~is defined in~~**]** KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1050 - 1926.1060 as revised July 1, 2010; and

(2) 29 C.F.R. 1926.1050 as amended in the August 9, 2010 Federal Register, Volume 75, Number 152.[~~The Occupational Safety and Health Standards Board hereby adopts 29 C.F.R., Part 1926.1050 - 1926.1060 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.~~

~~(1) Revisions to 29 C.F.R. 1926.1050 - 1926.1060, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, are incorporated by reference.~~

~~(2) The revision to 29 C.F.R. 1926.1050, "Scope, Application, and Definitions Applicable to this Subpart", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.~~

~~(3) Amendments, revisions and additions to 29 C.F.R. 1926.1052, "Stairways and Ladders," as published in the Federal Register, Volume 56, Number 164, August 23, 1991, are incorporated by reference.~~

~~(4) Amendments, revisions and additions to 29 C.F.R. 1926.1053, "Stairways and Ladders," as published in the Federal Register, Volume 56, Number 164, August 23, 1991, are incorporated by reference.~~

~~(5) Revisions to 29 C.F.R. 1926.1060, as published in the Federal Register, Volume 56, Number 15, January 23, 1991, are incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~]

J. R. GRAY, Chairman

APPROVED BY AGENCY: August 30, 2010

FILED WITH LRC: August 30, 2010 at 4 p.m.

CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:430. Appendix A to 29 C.F.R. Part 1926.

RELATES TO: KRS **338.015(1), (2), 338.051, 29 C.F.R. 1926, Appendix A[**~~Chapter 338.051, 338.061~~**]**
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 **authorize[**~~require~~**]** the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health rules**,[**~~and~~**]** administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.
(2) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).
(3) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: **[**~~(1)~~**]**Appendix A to 29 C.F.R. 1926, revised July 1, 2010 and, as amended, in the August 9 Federal Register, Volume 75, Number 152.

J. R. GRAY, Chairman
APPROVED BY AGENCY: August 30, 2010
FILED WITH LRC: August 30, 2010 at 4 p.m.
CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: **KRS 338.015,** 29 C.F.R. Part 1926.1400-1926.1441
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 **authorize[**~~require~~**]** the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner,
Department of Workplace Standards, Labor Cabinet.
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).
(5) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).
(6) "Established federal standard" is defined **by[**~~in~~**]** KRS 338.015(10).
(7) "National consensus standard" is defined **by[**~~in~~**]** KRS 338.015(9).
(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) "Standard" **means "occupational safety and health standard" as defined by[**~~is defined in~~**]** KRS 338.015(3).
(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: **[**~~(1)~~**]**29 C.F.R. Part 1926, Subpart CC, Cranes and Derricks in Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

J. R. GRAY, Chairman
APPROVED BY AGENCY: August 30, 2010
FILED WITH LRC: August 30, 2010 at 4 p.m.
CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, November 9, 2010)

803 KAR 2:550. Cranes and derricks used in demolition and underground construction.

RELATES TO: **KRS 338.015,** 29 C.F.R. Part 1926.1500-1926.1501
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 **authorize[**~~require~~**]** the Kentucky Occupational Safety and Health Standards Board to**[**~~adopt and~~**]** promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined **by[**~~in~~**]** KRS 338.015(2).
(5) "Employer" is defined **by[**~~in~~**]** KRS 338.015(1).
(6) "Established federal standard" is defined **by[**~~in~~**]** KRS 338.015(10).
(7) "National consensus standard" is defined **by[**~~in~~**]** KRS 338.015(9).
(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) "Standard" **means occupational safety and health standard" as defined by[**~~is defined in~~**]** KRS 338.015(3).
(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: **[**~~(1)~~**]**29 C.F.R. Part 1926, Subpart DD, Cranes and Derricks Used in Demolition and Underground Construction, published in the August 9, 2010 Feder-

al Register, Volume 75, Number 152.

J. R. GRAY, Chairman
APPROVED BY AGENCY: August 30, 2010
FILED WITH LRC: August 30, 2010 at 4 p.m.
CONTACT PERSON: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(As Amended at ARRS, November 9, 2010)

805 KAR 3:100. Equipment use and operation.

RELATES TO: KRS 351.070
STATUTORY AUTHORITY: KRS 351.070
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070 authorizes the Secretary of the Energy and Environment Cabinet to promulgate, amend, or rescind any administrative regulations as necessary and suitable for the proper administration of KRS Chapter 351. This administrative regulation establishes[~~is to establish~~] safety standards controlling the use **and operation** of equipment**[**~~and the operation thereof~~**]** in the Commonwealth's surface type coal and clay mines,[~~mines~~] which include strip and auger mining operations.

Section 1. The following items shall be guarded to prevent injury:
(a) Gears;
(b) Sprockets;
(c) Chains;
(d) Drive, head, tail, and take-up pulleys;
(e) Flywheels;
(f) Couplings;
(g) Shafts;
(h) Sawblades;
(i) Fan inlets; and
(j) Similar exposed moving machine parts that may cause injury to persons.[~~Gears; sprockets; chains; drive, head, tail and take-up pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may cause injury to persons, shall be guarded.~~]

(2) An overhead belt[~~belts~~] shall be guarded if the whipping action from a broken belt may[~~would~~] be hazardous to a person[~~persons~~] below.

(3) A guard[~~Guards~~] at conveyor drive, head and tail pulleys shall be sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

(4) A protruding set screw[~~Protruding set screws~~] on revolving parts shall be guarded.

(5) Except when testing the machinery, a guard[~~guards~~] shall be securely in place while machinery is being operated.

(6) A guard[~~Guards~~] shall be sufficiently strong and maintained to provide the required protection.

(7) A stationary grinding machine[~~Stationary grinding machines~~] other than special bit grinder[~~grinders~~] shall be equipped with:**[**~~wit~~**][;]**

(a) Peripheral hoods (less than ninety (90) degree throat openings) capable of withstanding the force of a bursting wheel;

(b) Adjustable tool rests set as close as practical to the wheel; and

(c) Safety washers.

(8) A face shield[~~Face shields~~] or goggles, in good condition, shall be worn when operating a grinding wheel.

(9) A hand-held power tool[~~Hand-held power tools~~], other than rock drill[~~drills~~], shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety devices.

(10) A guard or shield[~~Guards or shields~~] shall be provided in areas where flying or falling materials present a hazard.

(11)(a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer shall be provided with rollover protection if necessary to protect the operator.

(b)1. An excavator manufactured after January 1, 2011 shall be provided with rollover protection. The rollover protection shall meet current International Organization for Standardization (ISO) standards in place **when[**~~at the time~~**]** the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of a rollover shall be equipped with rollover protection that shall meet, at a minimum, the ISO 12117-2:2008 standard or **the equivalent ISO standard[**~~an equivalent~~**].**

(12)(a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer, shall be provided with falling object protection if necessary to protect the operator against falling material.

(b)1. An excavator manufactured after January 1, 2011 shall be provided with falling object protection. The falling object protection shall meet ISO standards in place **when[**~~at the time~~**]** the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of falling objects shall be equipped with falling object protection that shall meet, at a minimum, the ISO 10262:1998 Level II standard or **the equivalent ISO standard[**~~an equivalent~~**].**[~~Vehicles such as fork lifts, trucks, front-end loaders, and bulldozers shall be provided with rollbar protection when necessary to protect the operator.~~

~~(12) Fork lift trucks, front-end loaders, and bulldozers, shall be provided with substantial canopies when necessary to protect the operator against falling material.~~]

(13) Unsafe equipment or machinery shall be removed from service immediately.

(14) Machinery and equipment shall be operated only by an authorized and experienced person[~~persons~~].

(15) A repair[~~Repairs~~] or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except if[~~where~~] machinery motion is necessary to make an adjustment or if[~~adjustments or where~~] nonenergized components of large machinery can be safely repaired while the machine is operating.

(16) A person[~~Men~~] shall not work on mobile equipment in a raised position until it has been blocked in place securely. This **shall[**~~does~~**]** not preclude the use of equipment specifically designed, such as elevated mobile work platforms.

(17) A drive belt[~~Drive belts~~] shall not be shifted while in motion unless the machine is[~~machines are~~] provided with mechanical a shifter[~~shifters~~].

(18) A belt, chain, or rope shall not be guided onto a power driven moving pulley, sprocket, or drum[~~Belts, chains, and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums~~] with the hands except on slow moving equipment especially designed for[~~or~~] hand feeding.

(19) A pulley or conveyor[~~Pulleys or conveyors~~] shall not be cleaned manually while the conveyor is in motion.

(20) A belt dressing[~~dressings~~] shall not be applied manually while the belt is[~~belts are~~] in motion unless an aerosol-type dressing is used.

(21) Machinery shall not be lubricated while in motion if[~~where~~] a hazard exists unless equipped with extended fittings or cups.

LEONARD K. PETERS, Secretary
APPROED BY AGENCY: August 26, 2010
FILED WITH LRC: August 26, 2010 at 3 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, and e-mail Michael.Mullins@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, November 9, 2010)

902 KAR 2:060. Immunization schedules for attending child school day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

RELATES TO: KRS 158.035, 211.090, 211.220, 214.032-214.036

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), **211.180(1)(a),** 214.034

NECESSITY, FUNCTION, AND CONFORMITY: KRS **194A.050 requires the secretary for the Cabinet of Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.190(3) requires the secretary to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS** 211.180**[**~~(1)(a)~~**]** ~~requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases.~~**]**KRS 214.034(1) requires **the cabinet to promulgate administrative regulations to establish immunization schedules[**~~the establishment of immunization schedules by the Cabinet for Health and Family Services~~**]**. This administrative regulation establishes the mandatory immunization schedule for attendance at **child** day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

Section 1. Definitions. (1) "**ACIP" or** Advisory Committee on Immunization Practices"**[**~~or "ACIP"~~**]** means the United States Department of Health and Human Services (HHS)[~~Public Health Service~~] Committee that makes national immunization recommendations to the Secretary of the HHS, the Assistant Secretary for Health, and the Director of the[~~Centers for Disease Control and Prevention~~].

(2) "Advanced Practice Registered Nurse" or "APRN" (APRN) means a nurse designated to engage in advanced registered nursing practice as defined in KRS 314.011.

(3) "Dose" means a measured quantity of vaccine, specified in the package insert provided by the manufacturer.

(4)[~~(3)~~] "DT" means diphtheria and tetanus toxoids combined.

(5)[~~(4)~~] "DTaP" means diphtheria and tetanus toxoids combined with acellular pertussis vaccine.

(6)[~~(5)~~] "DTP" means diphtheria and tetanus toxoids combined with pertussis vaccine.

(7) "Healthcare provider" means a person licensed under KRS 311.530 to 311.620, 311.840 to 311.862, and a nurse designated to engage in advanced practice registered nursing as defined in KRS 314.011 and 314.042.

(8)[~~(6)~~] "HepB" means hepatitis B vaccine.

(9)[~~(7)~~] "Hib" means haemophilus influenzae type b conjugate vaccine.

(10)[~~(8)~~] "IPV" means inactivated polio virus vaccine.

(11) "MCV" means meningococcal conjugate vaccine.

(12) **"MMR" means measles, mumps, and rubella vaccines combined.**

(13) "MPSV" means meningococcal polysaccharide vaccine. **[**~~(13)~~**]**[~~(9)~~]**[**~~"MMR" means measles, mumps, and rubella vaccines combined.~~**]**[~~(10) "Measles-containing vaccine" means a vaccine that contains the measles virus.~~]

(14)[~~(11)~~] "OPV" means trivalent oral poliovirus vaccine (Sabin).

(15) **"PVC" means pneumococcal conjugate vaccine.**

(16) "Pharmacist" means a person licensed under KRS 315.002 to 315.050.

(17)[~~(16)~~**]** "Physicians Assistant" means a person licensed under KRS 311.840 to 311.862. **[**~~(17) "PCV" means pneumococcal conjugate vaccine.~~**]**

(18)[~~(15) "Pharmacist" means a person licensed under KRS 315.002 to 315.050.~~

~~(16) "Physicians assistant" means a person licensed under KRS 311.840 to 311.862.~~

~~(17) "PCV" means pneumococcal conjugate vaccine.~~

~~(18)~~ ~~(12)~~] "Td" means combined tetanus and diphtheria toxoids (adult type).

(19) "Tdap" means tetanus toxoid and reduced diphtheria toxoid combined with acellular pertussis vaccines.

(20)[~~(13)~~] "Varicella" means varicella or chickenpox vaccine.

Section 2. Immunization Schedules. (1) A child three (3) months of age or older, without a current immunization certificate, shall not attend:

(a) A **child** day care center;

(b) Certified family child care home;

(c) Other licensed facility which cares for children;

(d) Preschool program; or

(e) Public or private primary or secondary school.

(2) Except as provided in Section 3 of this administrative regulation, the immunization certificate of a child shall be considered current if the child is:

(a) At least three (3) and less than five (5) months of age and has received at least:

1. One (1) dose of DTaP or DTP[~~or DTaP~~];
2. One (1) dose of IPV or OPV[~~or IPV~~];
3. One (1) dose of Hib;[~~and~~]
4. One (1) dose of HepB; and
5. One (1) dose of PCV;

(b) At least five (5) and less than seven (7) months of age and has received at least:

1. Two (2) doses of DTaP or DTP[~~or DTaP~~] or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV[~~or IPV~~] or combinations of the two (2) vaccines;
3. Two (2) doses of Hib;[~~and~~]
4. Two (2) doses of HepB; and
5. Two (2) doses of PCV;

(c) At least seven (7) and less than twelve (12) months of age and has received at least:

1. Three (3) doses of DTaP or DTP[~~or DTaP~~] or combinations or the two (2) vaccines;
2. Two (2) doses of IPV or OPV[~~or IPV~~] or combinations of the two (2) vaccines;
3. Two (2)[~~Three (3)~~] doses of Hib;[~~and~~]
4. Two (2) doses of HepB; and
5.a. Three (3) doses of PCV; or

b. Two (2) does of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age;

(d) At least twelve (12) and less than sixteen (16) months of age and has received at least:

1. Three (3) doses of DTaP or DTP[~~or DTaP~~] or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV[~~or IPV~~] or combinations of the two (2) vaccines;

3.a. Three (3) doses of Hib; or

b. Two (2) doses of Hib between twelve (12) and fifteen (15) months of age;[~~and~~]

4. Two (2)[~~Three (3)~~] doses of HepB; and

5. a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age;**[**~~or~~**]**

b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one (1) dose on or after twelve (12) months of age; or

c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age;

(e) At least sixteen (16) and less than nineteen (19) months of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;
2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;
3. Four (4) doses of Hib;
4. Two (2) doses of HepB;
5.a. Four (4) doses of PCV with one (1) dose on or after twelve

(12) months of age;**[**~~or~~**]**

b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one dose on or after twelve (12) months of age; or

c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age;

6. One (1) dose of MMR; and

7. One (1) dose of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(f) At least nineteen (19) and less than forty-eight (48) months of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines:

3. Four (4) doses of Hib;

4. Three (3) doses of HepB; and

5.a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age;**[**~~or~~**]**

b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one (1) dose on or after twelve (12) months of age;**[**~~or~~**]**

c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to fifteen (15) months of age; **or**

d. One (1) dose of PCV if a child received the first dose of PCV at twenty-four (24) months of age or older;

6. One (1) dose of MMR; and

7. One (1) dose of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(g) At least forty-eight (48) months and less than five (5) years of age and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Four (4) doses of Hib;

4. Three (3) doses of HepB;

5.a. Four (4) doses of PCV with one (1) dose on or after twelve (12) months of age;**[**~~or~~**]**

b. Three (3) doses of PCV if a child received the first dose of PCV between seven (7) to eleven (11) months of age, with at least one (1) dose on or after twelve (12) months of age;**[**~~or~~**]**

c. Two (2) doses of PCV if a child received the first dose of PCV between twelve (12) to twenty-three (23) months of age; **or**

d. One (1) dose of PCV if a child received the first dose of PCV at age twenty-four (24) months or older;

6. Two (2) doses of MMR; and

7. Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(h) At least five (5) and less than seven (7) years of age and has received at least:

1. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Three (3) doses of HepB;

4. Two (2) doses of MMR; and

5. Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(i) At least seven (7) years of age and less than eleven (11) years of age and has received:

1.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or

b. A dose of Td that was preceded by two (2) doses of DTP, DTaP, DT, or Td or combinations of the four (4) vaccines;

2. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Three (3) doses of HepB;

4. Two (2) doses of MMR; and

5. Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider;

(3) For sixth grade entry, age eleven (11) or twelve (12) years or older, a child shall have received:

(a) One (1) dose of Tdap **[**~~if it has been at least two (2) years since the administration of the last dose of a tetanus-containing vaccine~~**]**;

(b) Four (4) doses of IPV or OPV or combinations of the two (2) vaccines;

(c)1. Three (3) doses of HepB; or

2. Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents eleven (11) through fifteen (15) years of age;

(d) Two (2) doses of MMR;

(e) Two (2) doses of varicella, unless a healthcare provider states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider; and

(f) One (1) dose of MCV or MPSV.

(4) Immunizations shall be administered at least at the minimum ages and intervals recommended by the ACIP. Partial, split, half, or fractionated doses or quantities shall not be administered and shall not be counted as a valid dose.

Section 3. Exceptions and Exemptions to the Immunization Schedules. (1) If the first two (2) doses of Hib vaccine required in Section 2(2) of this administrative regulation were meningococcal group B outer membrane protein (PRP-OMP) vaccines, the third dose may be omitted.

(2) If one (1) dose of Hib vaccine has been administered to a child who is at least fifteen (15) and less than sixty (60) months of age, the child shall:

(a) Not be required to receive further doses of Hib; and

(b) Be considered to have received the Hib doses required by this administrative regulation.

(3) A child with a contraindication to pertussis vaccine may be given DT in lieu of DTaP or Td in lieu of Tdap required in Section 2 of this administrative regulation.

(4) If the fourth dose of DT, DTP, or DTaP was administered on or after the fourth birthday, the fifth dose shall not be required.

(5) If the third dose of IPV or OPV was administered on or after the fourth birthday and at least six (6) months following the previous dose, the fourth dose shall not be required.

(6) If one (1) dose of PCV has been administered to a child who is at least age twenty-four (24) months and less than sixty (60) months of age, the child shall:

(a) Not be required to receive further doses of PCV; and

(b) Be considered to have received the PCV doses required by this administrative regulation.**[**;**]**

(7) A child with a medical contraindication to receiving a vaccine may obtain, from **the child's[**~~his or her~~**]** healthcare provider, a "Certificate of Medical Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(8)(a) A healthcare provider, pharmacist, local health department, or other licensed healthcare facility administering immunizations, shall, upon receipt of a written sworn statement from the parent or guardian of a child, issue a "Certificate of Religious Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(b) A "Certificate of Religious Exemption" shall only be valid for all requirements of Section 2 of this administrative regulation.

(9)(a) A provisional immunization certificate shall be issued for

an otherwise-qualified child, who is behind in required immunizations, and:

1. Who has not yet reached the required minimum age; or

2. For whom the time interval between doses has not elapsed.

(b) A provisional immunization certificate shall:

1. Permit a child to attend a **child** day care center, certified family child care home, other licensed facility which cares for children, preschool program, primary or secondary school until **the child[**~~he or she~~**]** reaches the appropriate age, or upon passage of the time interval between required doses;

2. Expire fourteen (14) days from the date the next dose is required to be given; and

3. Not be valid for more than one (1) year.

Section 4. Immunization Certificates. (1) An immunization certificate may be issued by:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician's assistant;

(d) A pharmacist;

(e) Local health department; or

(f)Other licensed healthcare facility administering immunizations.

(2) An immunization certificate may be signed by:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician's assistant;

(d) A pharmacist;

(e) Local health department administrator; or

(f) A registered nurse designee of a physician, local health department administrator, or other licensed healthcare facility.

(3) A local health department, healthcare provider, pharmacist, or other licensed healthcare facility administering immunizations may obtain the following immunization certificates from the Cabinet for Health and Family Services:

(a) Commonwealth of Kentucky Immunization Certificate;

(b) Commonwealth of Kentucky Provisional Immunization Certificate;

(c) Commonwealth of Kentucky Certificate of Medical Exemption; or

(d) Commonwealth of Kentucky Certificate of Religious Exemption.

(4) If an immunization certificate that was not provided by the Cabinet for Health and Family Services is issued to a child, it shall:

(a) Be a hard copy or an electronically-produced copy;

(b) Be in the same size and format as a certificate provided by the Cabinet for Health and Family Services; and

(c) Contain at least the following information:

1. The name of the child;

2. The birthdate of the child;

3. The name of the parent or guardian of the child;

4. The address of the child, including street, city, state, zip code;

5. The type(s) of vaccine(s) administered to the child;

6. The date that each dose of each vaccine was administered;

7. Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

8. The signature and the date of the signature of:

a. A physician;

b. An advanced practice registered nurse;

c. A physician's assistant;

d. A pharmacist;

e. Local health department administrator; or

f. A registered nurse designee of a physician, local health department administrator, or other licensed healthcare facility; and

9. The name of the healthcare provider practice, pharmacy, local health department, or licensed health care facility.

10. Immunizations included on the certificate shall only be those immunizations required for attending **child** day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private elementary or secondary schools as outlined in Section 2 of this administrative regulation. The certificate issued may have a separately titled additional page for all immunizations administered but not otherwise required for attending **child** day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private elementary, and secondary schools.

(5) A completed immunization certificate shall:

(a) Be on file for a child:

1. Enrolled in a public or private primary or secondary school or preschool program; or

2. Cared for in:

a. A **child** day care center;

b. A certified family child care home; or

c. Other licensed facility that cares for children; and

(b) Be available for inspection and review by a representative of the Cabinet for Health and Family Services or a representative of a local health department.

Section 5. **Effective Date. This regulation shall become effective for the school year beginning on or after July 1, 2011 for all child day cares, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private primary, and secondary schools.**

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

(a) "Commonwealth of Kentucky Immunization Certificate (EPID 230)", revised 08/2010;

(b) "Commonwealth of Kentucky Provisional Immunization Certificate (EPID 230A)", revised 08/2010;

(c) "Commonwealth of Kentucky Certificate of Medical Exemption (EPID 230B)", revised 08/2010"; and

(d) "Commonwealth of Kentucky Certificate of Religious Exemption (EPID 230C)", revised 08/2010.

(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. **[**~~Section 10. Effective Date. This regulation shall become effective for the school year beginning on or after July 1, 2011 for all day cares, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private primary, and secondary schools.~~**]**[~~(e) At least sixteen (16) and less than nineteen (19) months of age and has received at least:~~

~~1. Four (4) doses of DTP or DTaP or combinations of the two (2) vaccines;~~

~~2. Two (2) doses of OPV or IPV or combinations of the two (2) vaccines;~~

~~3. Four (4) doses of Hib;~~

~~4. One (1) dose of MMR; and~~

~~5. Three (3) doses of HepB;~~

~~(f) At least nineteen (19) and less than forty-nine (49) months of age and has received at least:~~

~~1. Four (4) doses of DTP or DTaP or combinations of the two (2) vaccines;~~

~~2. Three (3) doses of OPV or IPV or combinations of the two (2) vaccines:~~

~~3. Four (4) doses of Hib;~~

~~4. One (1) dose of MMR;~~

~~5. One (1) dose of varicella, unless a parent, guardian, or physician states that the child has had chickenpox disease; and~~

~~6. Three (3) doses of HepB;~~

~~(g) At least forty-nine (49) months and less than five (5) years of age and has received at least:~~

~~1. Four (4) doses of DTP or DTaP or combinations of the two (2) vaccines;~~

~~2. Three (3) doses of OPV or IPV or combinations of the two (2) vaccines;~~

~~3. Four (4) doses of Hib;~~

~~4. One (1) dose of MMR and a second dose of measles-containing vaccine;~~

~~5. Three (3) doses of HepB; and~~

~~6. One (1) dose of varicella vaccine, unless a parent, guardian, or physician states that the child has had chickenpox disease;~~

~~(h) At least five (5) and less than seven (7) years of age and~~

has received at least:

1. Five (5) doses of DTP or DTaP or combinations of the two (2) vaccines;

2. Four (4) doses of OPV or IPV or combinations of the two (2) vaccines;

3. One (1) dose of MMR and a second dose of measles-containing vaccine;

4. Three (3) doses of HepB; and

5. One (1) dose of varicella, unless a parent, guardian, or physician states that the child has had chickenpox disease; or

(i) Seven (7) years of age or older and has received:

1.a. Five (5) doses of DTP or DTaP or combinations of the two (2) vaccines; and

b. A dose of Td that was preceded by two (2) doses of DTP, DTaP, DT, or Td or combinations of the four (4) vaccines;

2. One (1) dose of Td given at eleven (11) to twelve (12) years of age, if at least five (5) years have elapsed since the last dose of DTaP, DTP, or DT;

3. Four (4) doses of OPV or IPV or combinations of the two (2) vaccines;

4. One (1) dose of MMR and if he or she was born October 1, 1990 or later, a second dose of measles-containing vaccine; and

5.a. Three doses of HepB, if he or she was born October 1, 1992 or later; or

b. Two (2) doses of adult HepB approved by the Federal Drug Administration (FDA) as an alternative schedule for adolescents eleven (11) to fifteen (15) years of age, completed by age sixteen (16).

(3) For sixth grade entry, not withstanding age, a child shall have received:

(a) One (1) dose of MMR and a second dose of measles-containing vaccine;

(b)1. Until the 2008-2009 school year, three (3) doses of HepB; or

2. Two (2) doses of adult HepB approved by the FDA an alternative schedule for adolescents eleven (11) to fifteen (15) years of age, completed by age sixteen (16); and

(c) Three (3) doses of OPV or IPV or combinations of the two (2) vaccines.

(4) A booster dose of DTaP, DTP, or DT shall be given every ten (10) years.

(5) Immunizations shall be administered at least at the minimum ages and intervals recommended by the ACIP. Partial, split, half, or fractionated quantities shall not be counted as a dose.

Section 3. Exceptions and Exemptions to the Immunization Schedules. (1) If the first two (2) doses of Hib vaccine required in Section 2(2) of this administrative regulation were meningococcal group B outer membrane protein vaccines, the third dose may be omitted.

(2) If a dose of Hib vaccine has been administered to a child who is at least fifteen (15) and less than sixty (60) months of age, the child shall:

(a) Not be required to receive further doses of Hib; and

(b) Be considered to have received the doses required by this administrative regulation.

(3) A child with a contraindication to pertussis vaccine may be given DT in lieu of DTP or DTaP required in Section 2 of this administrative regulation.

(4) If the fourth dose of DT, DTP, or DTaP was administered on or after the fourth birthday, the fifth dose shall not be required.

(5) If the third dose of IPV or OPV was administered on or after the fourth birthday, the fourth dose shall not be required.

(6) A child with a medical contraindication to receiving a vaccine may obtain, from his attending physician, a "Certificate of Medical Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(7) A physician, local health department, or medical facility administering immunizations, shall, upon receipt of a written sworn statement from the parent or guardian of a child, issue a "Certificate of Religious Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(8)(a) A provisional immunization certificate shall be issued for an otherwise-qualified child:

1. Who has not yet reached the required minimum age; or

2. For whom the time interval between doses has not elapsed.

(b) A provisional immunization certificate shall:

1. Permit a child to attend a day care center, certified family child care home, other licensed facility which cares for children, preschool program, primary or secondary school until he or she reaches the appropriate age, or upon passage of the time interval between required doses;

2. Expire fourteen (14) days from the date the next dose is required to be given; and

3. Not be valid for more than one (1) year.

Section 4. Immunization Certificates. (1) An immunization certificate may be issued by:

(a) A physician;

(b) An advanced registered nurse practitioner;

(c) A physician's assistant;

(d) Local health department; or

(e) Other licensed health facility administering immunizations.

(2) An immunization certificate may be signed by:

(a) A physician;

(b) An advanced registered nurse practitioner;

(c) A physician's assistant;

(d) Local health department administrator; or

(e) A physician or local health department administrator designee.

(3) A local health department, physician, or other licensed health facility administering immunizations may obtain the following immunization certificates from the Cabinet for Health Services:

(a) "Commonwealth of Kentucky Immunization Certificate";

(b) "Commonwealth of Kentucky Certificate of Medical Exemption";

(c) "Commonwealth of Kentucky Childhood Immunization Law Certificate of Religious Exemption"; or

(d) "Commonwealth of Kentucky Provisional Immunization Certificate".

(4) If an immunization certificate that was not provided by the Cabinet for Health Services is issued to a child, it shall:

(a) Be a hard copy or an electronically-produced copy;

(b) Be in the same format as a certificate provided by the Cabinet for Health Services; and

(c) Contain at least the following information:

1. The name of the child;

2. The birthdate of the child;

3. The name of the parent or guardian of the child;

4. The address of the child, including street, city, state, zip code;

5. The type of vaccine administered to the child;

6. The date that each dose of each vaccine was administered;

7. Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

8. The signature and the date of the signature of:

a. The physician;

b. Local health department administrator; or

c. Designee of the physician or local health department administrator.

(5) A completed immunization certificate shall:

(a) Be on file for a child:

1. Enrolled in a public or private primary or secondary school or preschool program; or

2. Cared for in:

a. A day care center;

b. A certified family child care home; or

c. Other licensed facility that cares for children; and

(b) Be available for inspection and review by a representative of the cabinet.

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

(a) "Commonwealth of Kentucky Immunization Certificate (EPID 230), revised 9/2002";

(b) "Commonwealth of Kentucky Provisional Immunization Certificate (EPID 230A), revised 9/2002";

~~(c) "Commonwealth of Kentucky Certificate of Medical Exemption (EPID 230B), revised 9/2002"; and~~

~~(d) "Commonwealth of Kentucky Childhood Immunization Law Certificate of Religious Exemption (EPID 230C), revised 9/2002".~~

~~(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, M.D., FAAP, CPE, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 10, 2010 at noon

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(As Amended at ARRS, November 9, 2010)

907 KAR 1:012. Inpatient hospital service coverage [~~services~~].

RELATES TO: KRS 205.520, 42 U.S.C. 1395ww**, 1396, 1396a, 1396b, 1396d, 1396r-4, 42 C.F.R. 440.10, Pub. L. 111-148**

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 **long term care** 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 **treatment for or related to a never event.**

(3) A hospital shall not seek payment for treatment for or related to a never event through:

(a) A recipient;

(b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or

(c) The Department for Juvenile Justice for 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 treatment for or related to a never event.[~~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.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(As Amended at ARRS, November 9, 2010)

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, **or[**~~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 **paragraph[**~~subsection~~**]** (a) of this **subsection[**~~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**, other than a screening in accordance with 907 KAR 1:014, Section 2(6)(a),** 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", **January 2007[**~~May 2004~~**]** edition;

(c) "Supplemental Medicaid Schedule KMAP-4", **January 2007[**~~May 2004~~**]** edition; and

(d) "Supplemental Medicaid Schedule KMAP-6", January 2007 edition.

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JANIE MILLER, Secretary
APPROVED BY AGENCY: July 1, 2010
FILED WITH LRC: July 1, 2010 at 4 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(As Amended at ARRS, November 9, 2010)

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)**, 2010 Extra. Sess. Ky. Acts ch. 1,** Part I.G.3.b.(26) **[**~~of HB 1 of the 2010 Extraordinary Session of the G.A.~~**]**

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 out-

patient 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) **(a) Except as provided in paragraph (b) of this subsection, the department shall cover the diabetic supplies listed in this paragraph via the department's pharmacy program and not via the department's durable medical equipment program established in 907 KAR 1:479:**

1. A syringe with needle (sterile, 1cc or less);

2. Urine test or reagent strips or tablets;

3. Blood ketone test or reagent strip;

4. Blood glucose test or reagent strips for a home blood glucose monitor;

5. Normal, low, or high calibrator solution, chips;

6. Spring-powered device for lancet;

7. Lancets per box of 100; or

8. Home blood glucose monitor.

(b) The department shall cover the diabetic supplies listed in this paragraph via the department's durable medical equipment program established in 907 KAR 1:479 if:

1. The supply has an HCPCS code of A4210, A4250, A4252, A4253, A4256, A4258, A4259, E0607 or E2100;

2. The supply has an a HCPCS code of A4206 and a diagnosis of diabetes is present on the corresponding claim; or

3. Medicare is the primary payor for the supply[~~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 **if included in the nursing facility's standard price[**~~. 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) **Noncontrolled substance,** except as prohibited in subsection (4)**[**~~,~~**]** of this section, **[**~~noncontrolled substance~~**]** may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(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 **each[**~~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 **shall[**~~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**, except for a refill for a recipient who is a resident of a personal care home or a resident of a facility reimbursed pursuant to 907 KAR 1:025 or 1:065,** time period has elapsed.

(b) A refill of a prescription for a recipient who is a resident of a facility or entity referenced in paragraph (a) of this subsection shall not be covered unless at least eighty (80) percent of the prescription time has lapsed.

Section 4. Prior Authorization Process. (1)(a) To request prior authorization for a drug:

1. The applicable form **as required by this section** 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 **shall be used by a**:

(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, Suboxone®, Subutex®, Zyvox®, **Synagis®,** 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, **a Brand Name Drug Request Form** 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

3.[~~b.~~**]** The prescriber certifies that the brand name drug is medically necessary in accordance with subsection **(3)(b)[**~~(9)~~**]** of this section.

(d) In addition to the requirements established in paragraphs (a) through (c) of this subsection, the prescriber **shall** 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**:**

a. Includes the name of the recipient and the brand name drug requested**;** and

b. 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 **this subsection.[**~~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)**(a)** If a prescriber submits a prescription to a pharmacy via telephone, the prescriber shall also fax the prescription for a controlled substance to the pharmacy within forty-eight (48) hours of submitting it via telephone.

(b) A pharmacy shall not be denied payment for services for the failure of the prescriber to fax the prescription for a controlled substance to the pharmacy if the pharmacy:

1. Requests a faxed prescription from the prescriber;

2. Documents the request for a faxed prescription; and

3. Documents that a faxed prescription, which was not received, was not received.

(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 **this subsection.[**~~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 **this subsection and KRS 205.5632.[**~~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 **the drug after federal rebate and supplemental rebates have been subtracted from the cost[**~~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 three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required[~~five (5) minutes~~]; or

(b) By an individual on a subject shall not exceed **three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required[**~~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 fourteen (14) days[~~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 **this subsection.[**~~the following:~~**]**

(a)1. A verbal presentation in aggregate per drug per drug manufacturer shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the P&T Committee, if required.[~~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 **a dated** 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 **after it is issued**.

(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 in a format which allows their signature to be reproduced or preserved[~~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 inter-

est 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", **November 2010[**~~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: October 14, 2010
FILED WITH LRC: October 14, 2010 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations
(As Amended at ARRS, November 9, 2010)

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)**, 1395m(a)(20)[**~~1395mm(20)~~**]**

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d**, 2010 Extra. Sess. Ky. Acts ch. 1,** 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. **1395m(a)(20)[**~~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 **practice** 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.

(20) A supplier shall have an order from a prescriber before dispensing any DMEPOS item to a recipient.

(21) A supplier shall have a written order on file prior to submitting a claim for reimbursement.

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)(j)[**~~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, **except for:**

1. Those for which Medicare is the primary payor;

2. Those with an HCPCS code of A4210, A4250, A4252, A4253, A4256, A4258, A4259, E0607 or E2100; or

3. Those with a HCPCS code of A4206 if a diagnosis of diabetes is present on the corresponding claim[~~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 **in** 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)**(a)** If an item requires prior authorization, a supplier shall **[**~~comply with the following~~**]**:

1.[~~(a)~~**]** Submit all required documentation prior to or within one (1) year from the date of service;

2.[~~(b)~~**]** Submit a written request to the department for prior authorization which shall include the prescriber's order; [~~and~~]

3.[~~(c)~~**]** Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization; and

(b)[~~(d)~~**]** If the required prior authorization submittals **required by paragraph (a) of[**~~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 **shall be[**~~,~~**]** 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 **denied prior authorization[**~~not prior authorized~~**]** for DMEPOS based upon an application of this administrative regulation, **the DME supplier involved in the prior authorization request shall submit to the department, within thirty (30) days of the prior authorization denial, a written request, by mail or fax, for a reconsideration**

review.

(2) Upon receipt of a reconsideration request and any supporting documentation, 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.

(3)[~~(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~~**]**.

(4)[~~(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.

(5)[~~(4)~~**]**[~~(2)~~] An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(6)[~~(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 **for Health Services** 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", **November 3,[**~~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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(As Amended at ARRS, November 9, 2010)

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, **2010 Extra. Sess. Ky. Acts ch. 1,** 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 defined by 42 U.S.C. 1395dd(e)**(1)**.[~~:~~

~~(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" is defined by 42 C.F.R. 447.53.[~~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)~~**]** "Kentucky All Schedule Prescription Electronic Reporting report" or "KASPER report" means a report displaying information regarding:

(a) All the scheduled prescriptions that an individual has had for the time period specified in the report;

(b) The prescriber for each prescription written for the individual during the time period specified in the report; and

(c) The dispenser who dispensed each prescription written for the individual during the time period specified in the report.

(9) "Lock-in program" means a department program which restricts a recipient to receiving Medicaid services from a designated provider.

(10) "Lock-in recipient" means a recipient enrolled in the lock-in program.

(11)[~~(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).

(12)[~~(11)~~] "Nonemergency care" means a service for a nonemergency condition.

(13)[~~(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.

(14)[~~(13)~~] "Physician" is defined by KRS 311.550(12).

(15)[~~(14)~~] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(16)[~~(15)~~] "Prescriber" means a **health care professional[**~~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.

(d) Prescribes in accordance with his or her current registration with the U.S. Department of Justice's Drug Enforcement Administration.

(17)[~~(16)~~] "Primary care provider" means an advanced practice registered nurse[~~practitioner~~], a physician, or physician assistant.

(18)[~~(17)~~] "Provider" is defined by KRS 205.8451(7).

(19)[~~(18)~~] "Provider abuse" is defined by KRS 205.8451(8).

(20)[~~(19)~~] "Recipient" is defined by KRS 205.8451(9).

(21)[~~(20)~~] "Recipient abuse" is defined by KRS 205.8451(10)

(22)[~~(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) 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.

(b) The department may also review data available to it to determine if potential fraud, recipient abuse, provider abuse, or overutilization has occurred regardless of whether or not a complaint was made regarding a given individual or provider.

(2) The department shall respond to a complaint or data review 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 or a KASPER report to identify if the recipient:

(a) Utilized Medicaid services at a frequency or amount which meets utilization criteria established in Section 4 of this administrative regulation; and

(b)1. Shall be restricted to receiving Medicaid services from designated providers under the lock-in program.[~~enrolled in the lock-in program to manage nonmedically necessary overutilization of Medicaid services by the recipient; or~~]

2. Shall be excluded from[~~not be enrolled in~~] the lock-in program if the recipient:

a. Resides in a facility reimbursed pursuant to 907 KAR 1:025 or 1:065 or in a personal care home.[~~long-term care nursing facility;~~]

b. Is under the age of eighteen (18) years;

c. Receives:

(i) Services through a home and community based waiver program in accordance with 907 KAR 1:145, 1:160, 1:595, 1:835, 3:090, or 3:210; or

(ii) Hospice services **in accordance with 907 KAR 1:330**.[~~Medicare benefits; or~~]

d. [~~Over~~]Utilized Medicaid services at a frequency or amount which was medically necessary[~~necessarily~~] to treat a complex, life threatening medical condition as determined by the department.[~~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. (1) 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 in two (2) consecutive 180 calendar day periods**,** the recipient:

(a)1. Received services from at least five (5) different providers;

2. Received at least ten (10) different prescription drugs; and

3. Received prescriptions from at least three (3) or more different pharmacies; or

(b)1. Had at least four (4) hospital emergency department visits for a condition that was not an emergency medical condition; or

2. Received services from at least three (3) different hospital emergency departments for a condition that was not an emergency medical condition.

(2)[~~(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:

(a) One (1) primary care provider, one (1) controlled substance prescriber, and one (1) pharmacy if the recipient meets the criteria established in subsection (1)(a) of this section; or

(b) 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 meets the criteria established in subsection (1)(b) of this section.[~~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. **(1)** 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:

(a) Send a written notification in accordance with subsection (2) of this section; and

(b) Enroll the recipient in accordance with subsection (3) of this section.

(2) The written notification sent to the recipient shall include:[~~(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 pro-

gram;

(b)[~~(c)~~] A description of the lock-in program;

(c)[~~(d)~~] The effective date of lock-in program enrollment;

(d)[~~(e)~~] Identification of the recipient's designated providers as established in subsection (2)(a) of this section;

(e)[~~(f)~~] Information relating to the recipient's right to a hearing as established in Section 9 of this administrative regulation; and

(f)[~~(g)~~] Contact information of an individual who may be contacted in writing or by telephone for information relating to the lock-in program**.[**~~; and~~**]**

(3)[~~(2)~~**]** Except for a recipient who requests a hearing relating to a department lock-in determination, **the department shall** enroll the recipient in the lock-in program within thirty (30) days of sending the written notification referenced in subsection **(2)[**~~(1)~~**]** of this section**. [**~~by:~~**]**

(a) **Once enrolled, the lock-in recipient shall be restricted[**~~Restricting the lock-in recipient~~**]** to receiving Medicaid[~~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**, has admitting privileges to the 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 **paragraph (c) of this** 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(2)**(b)**[~~4(3)~~] of this administrative regulation, one (1) hospital**.[**~~;~~**]**

(b) **[**~~Maintaining~~**]** The restrictions identified in paragraph (a) of this subsection **shall be maintained** 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, **the department shall conduct[**~~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 continues to meet the criteria established in Section 4(1) of this administrative regulation[~~(i) Does not use a designated provider; or~~

~~(ii) Meets the criteria as established in Section 4 of this administrative regulation~~]; or

b. Be discharged from the lock-in program if the recipient[~~disenrolled if the recipient:~~

~~(i) Uses a designated provider; and~~

~~(ii)~~] does not meet the criteria established in Section 4**(1)** of this administrative regulation**.[**~~; and~~**]**

(d) **The department shall provide[**~~Providing~~**]** the lock-in recipient with a written notification, which **shall include[**~~includes~~**]**:

1. Findings of a utilization review as identified in paragraph (c) of this subsection; and

2. A decision to maintain enrollment in or discharge the recipient from the lock-in program.[~~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. (1) A designated provider as identified in Section 5(2)(a) **of this administrative regulation** shall be **the**[~~serve as~~] **[**~~a~~**]** designated provider of a lock-in recipient for at least twenty-four (24) months except **if[**~~for the following situations~~**]**:

(a)**[**~~1.~~**]**[~~(1)~~] the designated provider[~~:~~

~~(a)~~] submits to the department a written request for a release from serving as the recipient's designated provider.**[**~~:~~

~~2. In the scenario describe in subparagraph 1 of this paragraph,~~**]** The provider shall continue to serve[~~; and~~

~~(b) Serves~~] as the recipient's designated provider until a comparable designated provider **is[**~~may be~~**]** selected;

(b)[~~(2)~~] The recipient relocates outside of the designated provider's geographic area;

(c)[~~(3)~~] **[**~~In accordance with Section 8(3) of this administrative regulation,~~**]** The recipient submits a written request to the department which:

1.[~~(a)~~] Requests a designated provider change; and

2.[~~(b)~~] Includes information to support cause or a necessary reason for the change, including the recipient:

a.[~~1.~~] Was denied access to a needed medical service;

b.[~~2.~~] Received poor quality of care; or

c.[~~3.~~] Does not have access to a provider qualified to treat the recipient's health care needs;

(d)[~~(4)~~] The designated provider withdraws or is terminated from participation in the Medicaid Program; or

(e)[~~(5)~~] The department determines that it is in the best interest of the lock-in recipient to change the designated provider.

(2) A designated provider for a recipient shall:

(a) Be chosen by the department; and

(b) Not be chosen by the recipient.

(3) A recipient shall not have more than one (1) change in a designated **primary care** provider within a twenty-four (24) month period**[**~~:~~

~~(a) Unless the department determines that an additional change would be in the best interest of the recipient; or~~

~~(b)~~**]** except as allowed in subsection (1) of this section.

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; **or**

2. A fee of five (5) dollars to a designated controlled substance prescriber**, unless the designated controlled substance prescriber is also the recipient's designated primary care provider. If a designated controlled substance prescriber is also the recipient's designated primary care provider, the department shall pay a fee of ten (10) dollars in aggregate for being the recipient's designated primary care provider; and[**~~; or~~

~~3. No more than ten (10) dollars to a designated controlled substance prescriber if the prescriber is also the lock-in recipient's designated primary care provider;~~**]**[~~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 in accordance with 907 KAR 1:014; 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(3)(a)[**~~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 **the charges for** 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(1)(c)[**~~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 **twenty-four (24)[**~~twelve (12)~~**]** month period following initial enrollment in the lock-in program.

Section 9. Appeal Rights. (1) 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 this section.

(2) The subject of **the[**~~a~~**]** hearing shall be limited to whether or not the department had sufficient evidence to support the department's decision.

(3) A request for a hearing shall be:

(a) In writing;

(b) Mailed to the department, to the attention of the commissioner; and

(c) Received by the department within thirty (30) calendar days from the date that the notice referenced in subsection (1) of this section was received by the recipient.

(4) A copy of **the[**~~a~~**]** request for a hearing shall be mailed to and received by the department's Division of Program Integrity within thirty (30) calendar days from the date that the notice referenced in subsection (1) of this section was received by the recipient.

(5) If a request for a hearing which meets the criteria established in subsection **(3)[**~~(2)~~**]** of this section is:

(a) Received by the department within ten (10) calendar days from the date that the recipient received a notice referenced in subsection (1) of this section, the lock-in action shall be delayed until a fair hearing has occurred; or

(b) Not received by the department within ten (10) calendar days from the date that the recipient received a notice referenced in subsection (1) of this section, the lock-in action shall not be delayed.

(6) A fair hearing shall be held in accordance with 907 KAR 1:563, Sections 6 through 15.[~~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", **November[**~~June~~**]** 2010 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, 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 regu-~~

~~lation; 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: October 14, 2010
FILED WITH LRC: October 14, 2010 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(As Amended at ARRS, November 9, 2010)

907 KAR 1:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, **142.303,** 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 **long term care** 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 **one (1), two (2), or three (3)[**~~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)(ii)(C)[**~~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) **Has** at least fifty (50) percent of its Medicaid population **as[**~~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)**(b)** 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) **Except as provided in paragraph (b) of this subsection,** 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**, with the[**~~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; **or[**~~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; **or[**~~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. **Using**[~~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. **Standardizing[**~~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)**, with:**

a. The labor related percentage equal to sixty-two (62) percent; and

b. The nonlabor related percentage equal to thirty-eight (38) percent; **[**~~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; **and**

(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; **or[**~~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 **seek payment for treatment for or related to a never event through:**

(a) A recipient;

(b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or

(c) The Department for Juvenile Justice for 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 treatment for or related to a never event.[~~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 **9[**~~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.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(As Amended at ARRS, November 9, 2010)

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 **provided to a Medicaid eligible[**~~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) "Advanced practice registered nurse" is defined by KRS 314.l011(7).

(7)[~~(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.

(8)[~~(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.

(9)[~~(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.

(10)[~~(9)~~] "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(11)[~~(10)~~] "Budget allowance" is defined by KRS 205.5605(1).

(12)[~~(11)~~] "Case manager" means an individual who manages the overall development and monitoring of a recipient's plan of care.

(13)[~~(12)~~] "Consumer" is defined by KRS 205.5605(2).

(14)[~~(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.

(15)[~~(14)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(16)[~~(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.

(17)[~~(16)~~] "DCBS" means the Department for Community Based Services.

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

(19)[~~(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.

(20)[~~(19)~~] "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(21)[~~(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; **and[**~~**or**~~**]**

(d) Others as designated by the ABI recipient.

(22)[~~(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.

(23)[~~(22)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24)[~~(23)~~][~~(22)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(25)[~~(24)~~][~~(23)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(26)[~~(25)~~][~~(24)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(27)[~~(26)~~][~~(25)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(28)[~~(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.

(29)[~~(28)~~] "Personal services agency" is defined by KRS 216.710(8).

(30)[~~(29)~~][~~(27)~~] "Psychologist" is defined by KRS 319.010**(9)[**~~(8)~~**]**.

(31)[~~(30)~~][~~(28)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32)[~~(31)~~][~~(29)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(33)[~~(32)~~][~~(30)~~] "Representative" is defined by KRS 205.5605(6).

(34)[~~(33)~~][~~(31)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(35)[~~(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.

(36)[~~(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.

(37)[~~(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 **a** 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 **required by [~~described in~~]** subparagraph 1 of this paragraph;

3. Ensure that an employee or volunteer who tests positive for TB or has **a** history of **a** 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)**1.** 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; **and**

b. A nurse aide abuse registry check as described in 906 KAR 1:100;

2. Obtain, 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; and

3.[~~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:

1. Does not possess a valid operator's license issued pursuant to KRS **186.410[**~~186.41~~**]**; or

2. 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 trafficking, manufacturing, or possession of an illegal drug [~~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;

(c)[~~(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;

(d)[~~(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;

(e)[~~(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;

(f)[~~(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 **(a nurse, pharmacist, or medical doctor)** 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

(g)[~~(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 **overnight** when an ABI recipient is **typically** 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 **receives[**~~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. **A Medicaid Waiver Assessment,[**~~- 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 **a MAP-10, Waiver Services – Physician's Recommendation[**~~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 **MAP 24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program[**~~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 **Family Guide to the Rancho Levels of Cognitive Functioning[**~~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, ABIB [~~BISB~~], and the department via **a MAP 24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program[**~~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) Readmitted from a temporary discharge;

(e) Admitted to a nursing facility; [~~or~~]

(f)[~~(e)~~] Changing the primary provider; or

(g)[~~(f)~~] Changing **the** 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) **The[**~~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. Continue to provide supports until alternative services or another placement is secured; and

7. 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 **services** 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 practice registered nurse **(APRN)**[~~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 **services**, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 **and certified at least annually by the department**; 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) **None[**~~Two (2)~~**]** of whom shall **[**~~not~~**]** be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications **at[**~~for~~**]** a monthly committee meeting **if the applications[**~~which~~**]** were received **at least[**~~no later than~~**]** three (3) business days [~~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**. The plan[**~~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 **services**, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 **and certified at least annually by the department**; 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) **None[**~~Two (2)~~**]** of whom shall **[**~~not~~**]** be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications **at[**~~for~~**]** a monthly committee meeting **if the applications[**~~which~~**]** were received **at least[**~~no later than~~**]** three (3) business days [~~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 **services**, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 **and certified at least annually by the department**; 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) **None[**~~Two (2)~~**]** of whom shall **[**~~not~~**]** be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications **at[**~~for~~**]** a monthly committee meeting **if the applications[**~~which~~**]** were received **at least[**~~no later than~~**]** three (3) business days [~~the close of business the day~~] before the committee convenes;

3. **Shall[**~~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**, if needed**;

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**, if needed**;

(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 practice registered nurse **(APRN)** [~~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. **Another[**~~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)[~~(j)~~] 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 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 **services** 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 **in the ABI waiver recipient's home between the assessor, the ABI waiver recipient, and, if appropriate, the recipient's family**[~~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**, which shall**:

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. **Be timely conducted to enable the results to be submitted to the department within[**~~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) **The plan of care in effect at the time of death;**

(b) The list of prescribed medications, including PRN medications, in effect at the time of death;

(c) The crisis plan in effect at the time of death[~~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 **MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, and a completed MAP-10, Waiver Services – Physician's Recommendation[**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 **completed MAP-10, Waiver Services – Physician's Recommendation,[**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. **None[**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 **MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, and a completed MAP-10, Waiver Services – Physician's Recommendation[**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 **the** 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 **the** 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 **MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, and the MAP-10, Waiver Services – Physician's Recommendation,[**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 **required by[**cited in**]** subsection **(14)[**(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 servic-

es; 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 **ABI[**~~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 **member**, or guardian **threatens or intimidates[**~~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 **10[**~~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. **If** 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 **(16)(b)[**~~(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 **the** Person**[-]** Centered Planning**: Guiding** 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 **that**:

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**, immediately upon request,** 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 or applicant[~~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, **Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program[**~~SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification~~**]**", August 2010[~~July 2008~~] [~~April 2007~~] edition;

(c) "MAP-26, **Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008[**~~Acquired Brain Injury (ABI) Waiver Services Program Application", August 2010~~**]**[~~July 2008~~] [~~May 2003~~] edition;

(d) "MAP-95, Request for Equipment Form", May 2010[~~June 2007~~] edition;

(e) "MAP-10**,** Waiver Services **– Physician's Recommendation**", August 2010[~~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", **September[**~~August~~**]** 2010 [~~April 2009~~] edition**; and**

(n) "Kentucky Consumer Directed Option Employee Provider Contract", May 4, 2007 edition.

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ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 14, 2010 at 3 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(As Amended at ARRS, November 9, 2010)

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 **service" or "ABI waiver service" means a home and community based waiver service provided to a Medicaid eligible individual who has acquired a brain injury[**~~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 **an ABI waiver service if the service is:**

1. Provided to an ABI recipient;

2. Prior authorized;

3.[~~:~~

~~(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;

4.[~~(b)~~**]** Medically necessary; and

5.[~~(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) **Except as provided by subsection (2) of this section,** 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	**1,344 units[**~~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	**16 units per day**	$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
Reassessment[~~Re-assessment~~**]**	The entire reassessment equals 1 unit	1 unit per ABI recipient	$100.00 per unit
CDO home and community supports	**not applicable**	**not applicable**	Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO community day supports	**not applicable**	**not applicable**	Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO goods and services	**not applicable**	**not applicable**	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:

(a)[~~1.~~**]**[~~They are~~] Not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

(b)[~~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 **this[**~~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

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(Amended After Comments)

103 KAR 15:180. Kentucky new markets development program tax credit.

RELATES TO: KRS 136.320, 136.330, 136.340, 136.350. 136.370, 136.390, 141.020, 141.040, 141.0401, **141.050,** 141.432, 141.433, 141.434, 304.3-270

STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) provides that the department shall promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit **authorized [**~~provided~~**]** by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is filed by a CDE with the department for certification as a qualified equity investment.

(3) **"Applications fee" means $1,000 dollars nonrefundable cashier's check that shall be attached to the application at the time of filing with the department.**

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5)[~~(4)~~**]** "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6)[~~(5)~~**]** "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

(7)[~~(6)~~**]** "Department" means the Kentucky Department of Revenue.

(8)[~~(7)~~**]** "Department's approval" means certified by the department as provided by KRS 141.433(3).

(9)[~~(8)~~**]** "Identification number" means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

(c) Kentucky Corporation/LLET Account Number for corporations and limited liability pass-through entities.

(10)[~~(9)~~**]** "Long-term debt security" is defined by KRS 141.432(3).

(11)[~~(10)~~**]** "Qualified active low-income community business" is defined by KRS 141.432(5).

(12)[~~(11)~~**]** "Qualified community development entity" is defined by KRS 141.432(6).

(13)[~~(12)~~**]** "Qualified equity investment" is defined by KRS 141.432(7).

(14)[~~(13)~~**]** "Qualified low-income community investment" is defined by KRS 141.432(8).

(15)[~~(14)~~**]** "Tax credit" is defined by KRS 141.432(9).

(16)[~~(15)~~**]** "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied:

(a) If the department intends to deny the application, the CDE will be notified in writing by the department of the reason for the denial, and the CDE will be allowed to correct the application as provided by KRS 141.433(2).

(b) If the department determines that the application is in compliance with KRS 141.432 to 141.434, a copy of the application will be returned to the CDE with written notice of the department's approval.

(c) The department shall accept an application on or after March 1, 2011. The department shall accept an application via hand-delivery, mail, express mail, or courier. The department shall not accept an application via facsimile, CD-Rom, CD, or electronic means. The date that the application is stamped received by the Office of Income Taxation, Division of Corporate Tax, Tax Credits Section, shall be the date that the application shall be recorded as received pursuant to the provisions of KRS 141.133. If the department receives an application or applications prior to March 1, 2011, each application shall be recorded as received on March 1, 2011.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The CDE's name, mailing address, identification number, telephone number, and fax number;

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) Type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) Submission date of application **in accordance with Section 2(2) of this administrative regulation**;

(5) Total number of taxpayers making qualified equity investments;

(6) Total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. Section 45D(c)**.[**~~. A copy of the certification~~**]** shall be attached to the application;

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth in such allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) **Proof of current certification with the CDFI Fund that shall include the original application to CDFI and all subsequent updates; [**~~A statement that the entity has certified to the CDFI Fund during the last twelve (12) months that it continues to meet its primary mission and accountability requirements, and the date of the certification; or the CDFI Fund has recertified the entity as a CDE during the last twelve (12) months, and the date of the recertification. A copy of the certification or recertification shall be attached to the application;~~**]**

(10) A statement that the entity includes the Commonwealth of Kentucky in its service area;

(11) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

(12) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by

KRS 141.432(5); and

(13) Name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment**;[.]**

(14) The application shall be executed by the executive **officer [**~~director~~**]** of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete**;**

(15) The application fee.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification (Revenue Form 41A720-S81).

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of Form 8874(K)-A will be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

Section 5. Information Required on or Attached to the Form 8874(K)-A. The following information shall be required on or attached to the Form 8874(K)-A:

(1) CDE's name and identification number;

(2) Taxpayer making the qualified equity investment:

(a) Name and address;

(b) Identifying number;

(c) Certified purchase price of the qualified equity investment;

(d) Date the CDE received cash for the qualified equity investment;

(e) Type of taxpayer making the qualified equity investment; and

(3) Certification by the executive director of the CDE, declaring under the penalty of perjury that the form, including all accompanying documents and statements, is true, correct and complete.

Section 6. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved:

(a) The CDE shall notify the department upon discovery of such event; or

(b) The department, upon discovery of such event or after receiving notice from the CDE of such event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture (Revenue Form 41A720-S82).

(3) If the taxpayer is a pass-through entity, a Form 8874(K)-B will also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

Section 7. Information Required on the Form 8874(K)-B. The following information shall be required on the Form 8874(K)-B:

(1) CDE's name and identification number;

(2) Taxpayer making the qualified equity investment:

(a) Name and address;

(b) Identifying number;

(c) Certified purchase price of the qualified equity investment;

(d) Date the CDE received cash for the qualified equity investment;

(e) Type of taxpayer making the qualified equity investment;

(f) Date the **tax credit with respect to a** qualified equity investment was subject to recapture;

(g) Explanation of recapture;

(h) Recapture amount of tax credit or balance of tax credit; and

(i) Signature of authorized department employee and date.

Section 8. Filing Requirements. (1) Form 8874(K)-A:

(a) A taxpayer claiming the tax credit shall attach each tax year a copy of Form 8874(K)-A to the tax return on which the credit is claimed.

(b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach each tax year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 41A765-GP(K-1)), incorporated by reference in 103 KAR 3:040, to the partner's member's, or shareholder's tax return on which the credit is claimed.

(2) Form 8874(K)-B:

(a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit recapture shall attach a copy of Form 8874(K)-B to the tax return for the tax year that includes the tax credit recapture date and enter the recapture on the applicable line of the tax return.

(b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit shall attach each tax year a copy of Form 8874(K)-B to the tax return on which the credit is claimed.

Section 9. Incorporation by Reference. (1). The following material is incorporated by reference:

(a) Revenue Form 41A720-S80, Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, June, 2010;

(b) Revenue Form 41A720-S81, Notice of Kentucky New Markets Development Program Tax Credit and Certification, June 2010; and

(c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, June 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at noon

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, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity in order for the department to certify a qualified equity investment in a qualified community development entity and allocate tax credits to a person or entity making the qualified equity investment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to identify the forms and filing requirements of a qualified community development entity and the department in the administration of the tax credits provided by the Kentucky New Markets Development Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) provides that the department shall promulgate administrative regulations necessary to implement and administer the provisions of KRS 141.432 to 141.434.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will provide the guidelines and filing requirements of a qualified community development entity with the department in order for the department to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

(2) If 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: All qualified community development entities filing an application with the department for certification of qualified equity investments as provided by KRS 141.432 to 141.434, and all taxpayers awarded new markets development program tax credits for qualified equity investments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing:

1. An application (Form 8874(K)) for certification of qualified equity investments eligible for the Kentucky new markets development program tax credit; or

2. A Form 8874(K)-A to certify the receipt of cash for each qualified equity investment. The entities will also follow the guidance in this administrative regulation when receiving Form 8874(K)-B from the department notifying the entities of a recapture of the Kentucky new markets development program tax credit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities as a result of this administrative regulation as this administrative regulation clarifies the statutes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have guidance which will expedite the filing of the application and forms required by statute with the department.

(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 regulation process for the Department of Revenue. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(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 qualified community development entities filing applications for certification of qualified equity investments with the department as provided by KRS 141.432 to 141.434.

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, 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 141.433(7) 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. This administrative regulation will not generate any revenue, but will increase the department's expenditures slightly in the administrative process, including the notification of taxpayers of the 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? This administrative regulation will not generate any tax revenue for the Commonwealth in the first year.

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

(c) How much will it cost to administer this program for the first year? The New Markets Development Program will require an increase in personnel and related costs to administer the program. This program is very complex and requires the department to certify each qualified equity investment and monitor each qualified equity investment for a period of seven years.

(d) How much will it cost to administer this program for subsequent years? The department will incur additional cost each year to administer the program as provided above.

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

Revenues (+/-): None

Expenditures (+/-): Hiring additional staff to administer the program will be an additional expenditure on the department along with the administrative costs associated with printing the certifications. At this time, the costs are undetermined.

Other Explanation:

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner[~~executive director~~] of the Department[~~Office~~] of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner[~~executive director~~] to promulgate an administrative regulation establishing the workers' compensation

medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1.[~~EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the Kentucky Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor; and

(2) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference. (1) The Kentucky Workers' Compensation Medical Fee Schedule for Physicians, **November[**~~September 15~~**]**, 2010[~~July 31, 2008~~] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: November 15, 2010

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

CONTACT PERSON: Charles E. Lowther, General Counsel, Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles E. Lowther

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

(2) If 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 medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The statute requires the schedules to be updated every 2 years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The medical fee schedule has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The updated fee schedule assists the workers' compensation program by updated fees for physicians to insure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

(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: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new medical fee schedule to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for 75 dollars or the disk for 35.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

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

(a) Initially: The contract for reviewing and updating the physicians fee schedule and all fee schedules is $64,800.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation sets forth an updated medical fee schedule for physicians. Some fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties 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? All parts of government with employees.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

(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 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 is generated.

(c) How much will it cost to administer this program for the first year? No new administration costs.

(d) How much will it cost to administer this program for subsequent years? No new administration 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:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(Amended After Comments)

806 KAR 17:320. Kentucky Access requirements.

RELATES TO: KRS 304.2-310, 304.9-020(1), 304.17-042, 304.17-070, 304.17A-005(26), 304.17A-140, 304.17A-200(8), 304.17A-230(2), 304.17A-243, 304.17A-245, 304.17B-001-304.17B-033, 304.18-110

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17B-031(1)[~~, EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance.~~]KRS 304.2-110(1) authorizes the commissioner[~~executive director~~] to make reasonable 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 304.17B-031(1) requires the department[~~office~~] to promulgate administrative regulations necessary to carry out the provisions of KRS 304.17B regarding Kentucky Access. This administrative regulation establishes eligibility, application process, effective dates of coverage, and premium payment requirements for Kentucky Access.

Section 1. Definitions. (1) "Adverse decision" means a decision the enrollee finds unfavorable that is not a coverage denial or adverse determination and that is reviewable by the department [~~office~~].

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

(3) "COBRA" is defined in KRS 304.17A-005(7).

(4) "Creditable coverage" is defined in KRS 304.17A-005(8).

(5) "Department" means the Department of Insurance.

(6) "Eligible individual" is defined in KRS 304.17A-005(11).

(7) "Enrollee" is defined in KRS 304.17B-001(9).

(8) "Future effective date" means a date no earlier than the first day of the month following the month of application and no later than a date three (3) months after the month of application.

(9) "Government" means any political unit, including local, city, county, state, and federal authority.

(10) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17B-001(11).

(11) "Guaranteed Acceptance Program qualified individual" is defined in KRS 304.17A-005(20).

(12) "Insurer" is defined in KRS 304.17A-005(27).

(13) "Kentucky Access" is defined in KRS 304.17B-001(17).

(14) "Month of application" means the earlier of:

(a) The month in which the date of receipt is logged by the third-party administrator for the application; or

(b) The month of the postmark date, if the application has a postmark date, before the last three (3) days of the month prior to its receipt.

(15) "Substantially similar coverage" means individual coverage that:

(a) Meets the definition of a health benefit plan as defined in KRS 304.17A-005(22);

(b) Includes a deductible that is the same as or higher than the deductible in the policy for which the applicant is applying; and

(c) Does not include policy limits that are more restrictive than the policy for which the applicant is applying.

(16) "Third-party administrator" means the administrator selected by the department pursuant to KRS 304.17B-011(1) to administer Kentucky Access.

Section 2. Application Process. (1) An individual applying for Kentucky Access shall submit to the third-party administrator:

(a) A completed:

1. Application form KA-1[~~HIPMC-KA-1~~];

2. Section III of application form KA-1[~~HIPMC-KA-1~~] if the individual is applying for dependent coverage when the initial application for coverage is submitted; and

3. Application form KA-2[~~HIPMC-KA-2~~] if the individual is applying for dependent coverage after the enrollee is enrolled in Kentucky Access;

(b) Documentation as required by Section 4 of this administrative regulation; and

(c) Premium payment for at least:

1. Two (2) months if selecting a monthly payment option;

2. Three (3) months if selecting a quarterly payment option;

3. Six (6) months if selecting a semi-annual payment option; or

4. Twelve (12) months if selecting an annual payment option.

(2) Application processing for a paper application shall be performed as follows:

(a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process the application in order of receipt.

(b) If the premium required by subsection (1)(c) of this section is not received with the application, the third-party administrator:

1. Shall not consider the application;

2. Shall return the application to the applicant; and

3. Initiate the process for refund of premium, if necessary.

(c) If the premium required by subsection (1)(c) of this section is received with the application, the third-party administrator shall review the application to determine if:

1. All sections of the application are completed, if necessary; and

2. All documentation required by Section 4 of this administrative regulation has been submitted.

(d) If an application is complete pursuant to subsection (2)(c) of this section, the third-party administrator shall:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015[~~Section 5(1)(b)~~]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

(i) Waiting three (3)[~~fifteen (15)~~] business days; or

(ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified,

determine if the applicant is eligible for Kentucky Access coverage.

(e) If an application is not complete, the third-party administrator shall:

1. Pend the application; and

2. Notify the applicant in writing, within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:

a. Identify the missing information needed to complete the application; and

b. Give the applicant thirty (30) days to provide the information.

(f) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015[~~Section 5(1)(b)~~]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

(i) Waiting three (3)[~~fifteen (15)~~] business days; or

(ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(g) If an applicant provides incomplete or insufficient information within fifteen (15) days of the date of the notification of missing information, the third-party administrator shall:

1. Return the application to a pending status; and

2. Notify the applicant in writing, within five (5) business days of receipt of the incomplete or insufficient information, that the application continues to be incomplete. The written notification shall:

a. Identify the information needed to complete the application; and

b. Give the applicant ten (10) days to provide the information.

(h) If an applicant fails to provide the information within thirty (30) days or within the timeframe in paragraph (g)2b of this subsection, the third-party administrator shall:

1. Determine the applicant ineligible;

2. Send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:

a. The reason for ineligibility; and

b. The right to appeal the determination in accordance with Section 7 of this administrative regulation; and

3. Initiate the process for refund of premium, if necessary.

(3) Application processing for a faxed or an electronic application shall be performed as follows:

(a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process applications in order of their receipt.

(b) If the premium required by subsection 1(c) of this section is not received within three (3) business days or postmarked more than three (3) business days from the date the application is electronically submitted or faxed, the third-party administrator shall:

1. Not consider the application;

2. Return the application to the applicant; and

3. Initiate the process for refund of premium, if necessary.

(c) If premium is postmarked three (3) business days or less from the date the application is electronically submitted or faxed, the third-party administrator shall review the application to determine if:

1. All sections of the application are completed, if necessary; and

2. All documentation required by Section 4 of this administrative regulation has been submitted.

(d) If an application is complete pursuant to subsection (3)(c) of this section, the third-party administrator shall:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015 [~~Section 5(1)(b)~~]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

(i) Waiting three (3) [~~fifteen (15)~~] business days; or

(ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(e) If an application is not complete pursuant to subsection (3)(c) of this section, the third-party administrator shall:

1. Pend the application; and

2. Notify the applicant in writing, within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:

a. Identify the missing information needed to complete the application; and

b. Give the applicant thirty (30) days to provide the information.

(f) If an applicant provides incomplete or insufficient information within fifteen (15) days of the date of the notification of missing information, the third-party administrator shall:

1. Return the application to a pending status; and

2. Notify the applicant in writing, within five (5) business days of receipt of the incomplete or insufficient information, that the application continues to be incomplete. The written notification shall:

a. Identify the information needed to complete the application; and

b. Give the applicant ten (10) days to provide the information.

(g) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015 [~~Section 5(1)(b)~~]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

(i) Waiting three (3) [~~fifteen (15)~~] business days; or

(ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(h)[~~(g)~~] If an applicant fails to provide the information within thirty (30) days, the third-party administrator shall determine the applicant ineligible and send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:

1. The reason for ineligibility; and

2. The right to appeal the determination in accordance with Section 7 of this administrative regulation.

(4) A determination of ineligibility in accordance with subsection 2(g) or subsection 3(g) of this subsection shall not preclude the applicant from filing a new application for Kentucky Access.

(5) Upon a determination of eligibility, the third-party administrator shall send to the applicant within five (5) business days:

(a) An identification card; and

(b) A health benefit plan coverage document.

(6) Upon a determination of ineligibility, the third-party administrator shall send to the applicant, within three (3) business days of the determination, a letter of notification of:

(a) The reason for the determination of ineligibility; and

(b) Right to appeal the determination in accordance with Section 7 of this administrative regulation.

Section 3. Effective Date of Coverage. (1)(a) Unless a future effective date is requested by an applicant and granted in accordance with subsection (1)(b) of this section, coverage for Kentucky Access shall be effective the first day of the month following the month of application in accordance with KRS 304.17B-019(5).

(b) Kentucky Access shall grant a future effective date, upon request, for an applicant whose prior coverage will terminate within three (3) months of the month of application. The effective date of Kentucky Access coverage shall be the first day after the applicant's prior coverage terminates.

(2) If a determination of ineligibility is overturned on appeal pursuant to Section 7 of this administrative regulation, coverage for Kentucky Access shall be effective in accordance with subsection (1) of this section.

(3) A dependent child added to an enrollee's plan shall have coverage under Kentucky Access, beginning:

(a) From moment of birth for a newborn child of an otherwise eligible Kentucky Access enrollee, in accordance with KRS 307.17-042;

(b) On the date of filing of a petition for adoption of a child, in accordance with KRS 304.17A-140;

(c) On the date of filing an application for appointment as a court-appointed custodial guardian of a minor child, in accordance with KRS 304.17A-140; or

(d) On the first day of the month following the month of application to add to Kentucky Access a dependent child not described in paragraph (a), (b), or (c) of this subsection.

(4) A dependent spouse added to an enrollee's plan within thirty-one (31) days of a qualifying event shall have coverage under Kentucky Access beginning on the date of the qualifying event.

Section 4. Proof of Eligibility. (1) An individual shall demonstrate eligibility by providing the following to the third-party administrator in accordance with Section 2 of this administrative regulation:

(a) An eligible individual who is qualifying pursuant to KRS 304.17B-015(1) shall submit documentation of at least eighteen (18) months of prior countable, creditable coverage provided by one (1) or more previous insurers or employers and documentation that the most recent coverage was group, governmental, or church plan coverage.

(b) An individual who is qualifying pursuant to KRS 304.17B-015(2) shall submit one (1) of the following:

1. A copy of a notice of rejection from one (1) insurer for individual health care coverage substantially similar to the Kentucky Access coverage for which the individual is applying, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later;

2. A copy of a notice of a premium rate for individual health care coverage offered by an insurer that exceeds the Kentucky Access premium rate for substantially-similar coverage, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later; or

3. Documentation from a physician dated within one (1) year preceding the effective date of Kentucky Access coverage stating the diagnosis of a high-cost condition as listed in KRS 304.17B-001(14).

(c) An individual who is qualifying as a GAP-qualified individual pursuant to KRS 304.17B-015(4)(a) shall submit documentation from the GAP participating insurer identifying the applicant as a GAP-qualified individual.

(d) An individual applying as a dependent pursuant to KRS 304.17B-015(4)(a) or Section 6 of this administrative regulation shall submit the documentation required by Section 6 of this administrative regulation.

(2) Proof of current Kentucky residency, required for eligible individuals applying pursuant to KRS 304.17B-015(1), shall be established by submitting documentation which may include a copy of:

(a) A valid Kentucky driver's license [~~issued within the past three (3) months~~];

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence [~~issued within the past three (3) months~~]; or

(c) A receipt in the applicant's name for dwelling expenses in Kentucky, which shall be dated within the most recent three (3) months before the date of application for Kentucky Access. This receipt may be for one (1) of the following payments:

1. Mortgage;
2. Rent; or
3. Utility bill.

(3) Proof of twelve (12) month Kentucky residency, required for individuals applying pursuant to KRS 304.17B-015(2) shall be established by submitting documentation which may include a copy of:

(a) A valid driver's license, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(c) A resident Kentucky income tax return for the most recent twelve (12) month tax period; or

(d) A receipt in the applicant's name for dwelling expenses in Kentucky dated twelve (12) months or more before the date of application for Kentucky Access for one (1) of the following payments:

1. Mortgage;
2. Rent; or
3. Utility bill.

(4) An individual who is eligible for coverage under Kentucky Access pursuant to KRS 304.17B-015(2) or (4) shall be subject to a preexisting condition exclusion for any mental or physical condition for which medical advice, diagnosis, care or treatment was recommended or received within the last six (6) month period ending on the individual's enrollment date:

(a) The exclusion time period shall not exceed a period of twelve (12) months following the enrollment date; and

(b) The exclusion shall not apply to:

1. Genetic information described as a condition in the absence of a diagnosis;

2. Domestic violence;

3. Newborn children if added to Kentucky Access within thirty-one (31) days of the date of birth; and

4. Adopted children if added to Kentucky Access on the date the child was legally placed for adoption or the date the child was legally adopted.

(5) An individual who is eligible pursuant to KRS 304.17B-015(2) or (4)(a), may submit documentation of countable, creditable coverage, if any, to reduce the preexisting condition exclusion time period as established in subsection (4)[~~(3)~~] of this section by the number of months of his countable, creditable coverage.

(6) If an individual terminated or was terminated from Kentucky Access coverage within the past twelve (12) months, he may reestablish eligibility, as permitted by KRS 304.17B-015(4)(c), by submitting written documentation of a good faith reason for the termination, including:

(a) Loss of employment;
(b) Moving out of state and returning;
(c) Change in family status; or
(d) Other situations beyond the individual's control.

Section 5. [~~Reasons for Ineligibility. (1) An individual shall not be eligible for Kentucky Access if:~~

~~(a) The individual is applying as an eligible individual and one (1) of the following applies:~~

~~1. The Kentucky Access premium, deductible, coinsurance, or copayment is partially or entirely paid for or reimbursed by the person's employer; or~~

~~2. The individual's employer offers a health benefit plan. A health benefit plan may include an individual policy issued through, or with the permission of, an employer for its employees in accordance with KRS 304.17A-200(8).~~

~~(b) The individual is applying pursuant to KRS 304.17B-015(2) and the Kentucky Access premiums, deductible, coinsurance, or copayment is partially or entirely paid or reimbursed by any of the following:~~

~~1. A government-funded or sponsored program;~~
~~2. A government agency;~~
~~3. A health care provider;~~
~~4. A public or private foundation;~~
~~5. A church or church-affiliated organization;~~
~~6. An employer of the individual;~~
~~7. A business entity; or~~
~~8. A person except for the individual or the individual's:~~
~~a. Parent;~~
~~b. Adult child;~~
~~c. Guardian;~~
~~d. Spouse; or~~
~~e. Court-ordered payee.~~

~~(2) An individual who is applying for Kentucky Access and is entitled to premium-free Medicare Part A as determined by the Centers for Medicare and Medicaid Services shall not be eligible for coverage under Kentucky Access.~~

~~Section 6.~~] Dependent Eligibility. (1) A spouse or a child may receive coverage as a dependent of an enrollee if:

(a) The spouse[~~or child~~] is a twelve (12) month resident of Kentucky;[~~or~~]

(b) The spouse [~~or child~~] is a current resident of Kentucky and [~~the enrollee~~] is an eligible individual pursuant to KRS 304.17B-015(1); or

(c) The child is a current resident of Kentucky.

(2) A child shall be an eligible dependent if he is[~~unmarried and~~]:

(a)[~~1.~~] Under the age of twenty-six (26)[~~nineteen (19)~~]; or

(b)[~~2. A student:~~

~~a. Under the age of twenty-five (25);~~

~~b. Enrolled full-time at an accredited educational institution; and~~

~~c. Chiefly dependent upon the enrollee for support;~~

~~(b)1. Under the age of twenty-five (25) regardless of student status; and~~

~~2. Covered through the purchase of a dependent rider; or~~

~~(c)~~] A child of any age who is:

1. Incapable of self-sustaining employment by reason of mental or physical disability; and

2. Chiefly dependent upon the enrollee for support.

(3) Documentation of dependent eligibility shall be submitted by the enrollee to the third-party administrator by the applicant when applying for coverage and as specified in subsection (3)(a) through (c) of this section.

(a) For eligibility pursuant to subsection (2)(a)[~~2.~~] of this section [~~:~~

~~1.~~] federal or state income tax records for the most recent twelve (12) month tax period, submitted annually[~~; and~~

~~2. Verification of full-time student status, submitted biannually~~].

(b) For eligibility pursuant to subsection (2)(b)[~~(c)~~] of this section:

1. Federal or state income tax records for the most recent twelve (12) month tax period, submitted annually; and

2. Letter of determination of disability from the Social Security Administration.

(4)[~~An enrollee who is an eligible dependent pursuant to subsection (2)(a) of this section shall submit documentation of dependent eligibility pursuant to subsection (3) of this section within sixty (60) days after a child covered as a dependent of the enrollee reaches age nineteen (19).~~

~~(5)~~] An enrollee shall submit to the third-party administrator documentation of dependent spouse eligibility, which may include a copy of:

(a) A joint federal or state tax return for the most recent twelve (12) month tax period;

(b) A marriage certificate; or

(c) A signed attestation or affidavit verifying the existence of a valid marriage between the enrollee and dependent spouse.

Section 6.[~~7.~~] Appeals. (1)(a) An applicant may request a reconsideration of a determination of ineligibility within thirty (30) days of a determination of ineligibility by filing a written explanation of the basis for the request for reconsideration with the third-party administrator.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or

2. Receipt of additional information, if requested by the third-party administrator.

(d) If the third-party administrator grants the request for reconsideration, the third-party administrator shall condition reinstatement based upon the receipt of additional premium due for the next coverage period.

(2)(a) If Kentucky Access denies, limits, or reduces coverage for a treatment, procedure, drug, or device, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or

2. Receipt of additional information, if requested by the third-party administrator.

(3)(a) If Kentucky Access denies coverage based on a plan delivery rule within the health benefit plan coverage document, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or

2. Receipt of additional information, if requested by the third-party administrator.

(4) An applicant may appeal the third-party administrator's decision by filing a written request for a review by the department. Within thirty (30) days of receipt, the department shall review the applicant's appeal and make a determination.

(5) An applicant may request an administrative hearing on the department's final determination in accordance with KRS 304.2-310.

Section 7.[~~8.~~] Termination. (1) An enrollee may be terminated due to one (1) of the following:

(a) An enrollee who ceases to meet the eligibility requirements of Section 2, 4, or 5[~~6~~] of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period in which the thirty (30) day notice, required by KRS 304.17A-245(1), expires;

(b) An enrollee who fails to provide documentation of dependent eligibility in accordance with Section 5[~~6~~](3) of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period during which the documentation is required; or

(c) An enrollee who fails to provide Kentucky Access with written notification of a change in resident address may be terminated by the third-party administrator at the end of the coverage period during which notification of the incorrect address is received.

(2) Coverage under Kentucky Access shall cease:

(a) On the earlier date that:

1. An enrollee gives written notice that the enrollee is no longer a resident of Kentucky; or

2. Documented evidence is received by Kentucky Access that the enrollee is no longer a resident of Kentucky;

(b) On the later date that:

1. Written notice of termination is received from the enrollee; or

2. Written future termination is requested by the enrollee;

(c) Upon the death of the enrollee;

(d) On the date the lifetime limit of KRS 304.17B-015(4)(d) is met; or

(e) If the premium amount due for the policy period is not received by the premium due date, subject to the grace period contained in KRS 304.17-070;

(f) If premiums are paid by an unauthorized party in accordance with KRS 304.17B-015(4)(f)[~~Section 5(1)(b) of this administrative regulation~~]; or

(g) If the member becomes eligible for coverage under Medicaid or Medicare.

1. If a member is eligible for Medicaid or Medicare on the effective date of this administrative regulation, the member's coverage shall terminate on January 1, 2010.

2. If a member becomes eligible for Medicaid or Medicare subsequent to the effective date of this administrative regulation, the member's coverage shall terminate on the date the member becomes eligible for coverage under Medicaid or Medicare.

Section 8.[~~9.~~] Premium. (1) Premiums for Kentucky Access shall be billed by the third-party administrator by the first business day of each month for the following month's coverage.

(2) Premiums not received by the premium due date, subject to the grace period contained in KRS 304.17-070, shall result in termination of Kentucky Access coverage effective the last date through which the premium was paid in accordance with KRS 304.17A-245(2).

(3) Premiums may be paid in advance by arrangement with the third-party administrator as follows:

(a) Monthly;

(b) Quarterly;

(c) Semiannually; or (d) Annually.

(4) Premium payments shall be accepted from an authorized party, in accordance with KRS 304.17B-015(4)(f)[~~Section 5(1)(b) of this administrative regulation~~] in the following formats:

(a) Paper check;[~~or~~]

(b) On-line banking payment; or

(c) Electronic funds transfer arranged in advance with the third-party administrator.

(5) Premium amounts for any dependent added to Kentucky Access shall be prorated based on the effective date of coverage.

(6) Premium amounts for coverage issued by Kentucky Access are reviewed and are subject to change by the department on an annual basis pursuant to KRS 304.17B-013.

(a) A new enrollee shall be charged the premium rate(s) in force on his effective date of coverage.

(b) An established enrollee shall be charged the premium rate(s) in force on each renewal date.

Section 9.[~~10.~~] Nonduplication of Benefits. (1) Pursuant to KRS 304.17B-019(9), Kentucky Access shall be the payor of last resort whenever any other benefit or source of third-party payment is payable. Benefits otherwise payable under Kentucky Access shall be reduced by all amounts paid or payable through:

(a) Other health insurance; or

(b) Hospitalization and medical expense benefits covered under:

1. Workers' compensation coverage;

2. Automobile medical payment or liability insurance; or

3. Any state or federal law or program.

(2) Pursuant to KRS 304.17B-007(3), the department[~~office~~] shall have a cause of action against an enrollee for the recovery of the amount of benefits paid by Kentucky Access that are not for covered expenses.

Section 10.[~~11.~~] General Provisions. Information required to be submitted pursuant to Sections 2 and 6[~~7~~] of this administrative regulation shall be considered received in a timely manner if it is postmarked three (3) or more business days before the date the required information is due.

Section 11.[~~12.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application form KA-1[~~HIPMC-KA-1~~]", **10/2010**[~~7/2010~~][~~7/2009~~]; and

(b) "Application form KA-2[~~HIPMC-KA-2~~]", 7/2010[~~7/2009~~].

(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.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 14, 2010

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

CONTACT PERSON: DJ Wasson, Staff Assistant, 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 eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.

(b) The necessity of this administrative regulation: KRS 304.17B-031 requires the Department of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation is needed to inform individuals seeking coverage in Kentucky Access of the process for application and the dates their coverage will be effective. This administrative regulation is also needed to inform existing members of premium payment requirements, reasons for termination and appeal rights.

(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 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 304.17B-031 requires the Department of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation establishes eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the specific procedures that must be followed to become a member of Kentucky Access and to maintain coverage through Kentucky Access.

(2) If 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 Kentucky Access statutes enacted in 10 RS HB 165 and federal law related to the age of dependents. This amendment will also make changes to the application process to set specific time frames for identifying, requesting and providing missing information and clearly allow for on-line premium payments. The application for coverage, incorporated as form KA-1, will be amended to clarify that a paper check must be used for the initial premium payment to allow an applicant to apply for a child-only plan and to close the Preferred Access, $750 deductible option, to new enrollment.

(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 provide clarity to the Kentucky Access procedures based on commonly asked questions.

(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 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 304.17B-031 requires Commissioner of Insurance to promulgate administrative regulations regarding Kentucky Access. The amendments to this administrative regulation clarify the application process, expand the definition of dependents that are eligible for coverage, allows for on-line premium payments, conforms the regulation to newly enacted laws, and allows for benefit plan designs that will more closely meet the needs of its members.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will clarify the process for applications received without necessary documentation, allow for on-line premium payments as requested by numerous members and provide conforming amendments for compliance with state and federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 4,618 members of Kentucky Access, an undetermined number of future applicants to Kentucky Access and the program's third-party ad-

ministrator.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The program's third-party administrator will be required to establish an internal process to address applications received without the required documentation and adjust the current rules related to dependent eligibility. Individuals applying for and current members of Kentucky Access will be required to follow the processes set forth this amendment in order to obtain and maintain their coverage through Kentucky Access.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not include additional costs for applicants for or current members of Kentucky Access. The existing administrator contract includes allowances for the program amendments included in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can obtain and maintain coverage through Kentucky Access. By complying with this amendment, the program's third-party administrator will avoid penalties as established within its existing contract.

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

(a) Initially: The day-to-day operations of Kentucky Access are handled by a third party administrator. The contract is competitively bid for a 4-year period with the option to renew for another two years. The contract amount for July 1, 2010 through June 30, 2011 is $7,000,000.

(b) On a continuing basis: The cost will be approximately $7,000,000 for each year.

(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 and members of Kentucky Access.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Kentucky Access Program.

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, 304.17B-031

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? This regulation should initially cost $7,000,000. This amount is based on the current, competitively bid contract for the administration of Kentucky Access. The amount to administer Kentucky Access for FY 10-11 is $7,000,000.

(d) How much will it cost to administer this program for subsequent years? This regulation should cost approximately $7,000,000 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:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. An educator preparation[~~A teacher education~~] institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of instructional leadership - school principal.

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of instructional leadership - school principal.

Section 2. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) A master's degree;

(b) Three (3) years of documented teaching experience in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association;

(c) A written statement documenting the candidate's skills and understanding in the following areas:

1. Ability to improve student achievement;

2. Leadership; and

3. Advanced knowledge of curriculum, instruction, and assessment; and

(d) An agreement from a school district pledging support that includes opportunities for the candidate to participate in a high quality practicum experience. The agreement shall include:

1. A description of how the district will provide opportunities for the candidate:

a. To observe school and district leadership; and

b. To participate in school and district leadership activities;

2. Confirmation that the candidate shall be permitted to utilize aggregated school and district information and data; and

3. The signature of the district superintendent or the district superintendent's designee.

Section 3. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall:

(1) Prepare a candidate for the position of school principal as specified in the standards included in:

(a) The "Educational Leadership Policy Standards: ISLLC 2008"; and

(b) The "Technology Standards for School Administrators"; and

(2) Document candidate performance using "Dispositions, Dimensions, and Functions for School Leaders".

Section 4. Principal Preparation Programs. (1) All principal preparation programs approved or accredited by the Education Professional Standards Board prior to May 31, 2009 shall no longer be approved or accredited as of December 31, 2011.

(a) A principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall cease admitting new candidates after December 31, 2011.

(b) Candidates admitted to a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall complete the program by January 31, 2014.

(c) An institution of higher learning with a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2009.

(d) An institution's redesigned principal preparation program may become operational beginning January 1, 2010, if the institution:

1. Submits a redesigned principal preparation program for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22.

(e) Institutions submitting a redesigned principal preparation program shall not be subject to any submission dates for program approval for principal preparation programs after[~~from~~] May 31, 2009[~~until December 31, 2012~~].

(f)1. The Education Professional Standards Board shall appoint a Principal Preparation Program Redesign Review Committee to conduct reviews of redesigned principal preparation programs submitted for approval after[~~between~~] May 31, 2009[~~and December 31, 2012~~].

2. Principal preparation programs submitted for approval after[~~between~~] May 31, 2009[~~and December 31, 2012~~] shall:

a. Be reviewed by the Principal Preparation Program Redesign Review Committee; and

b. Not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22(2).

3.a. After review of a principal preparation program, the Principal Preparation Program Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

i. Approval;

ii. Approval with conditions; or

iii. Denial of approval.

b. The Education Professional Standards Board shall consider recommendations from staff and the Principal Preparation Program Redesign Review Committee and shall issue a decision pursuant to 16 KAR 5:010, Section 22(4).

(2) Beginning May 31, 2009, in addition to the requirements established in 16 KAR 5:010, Section 22, the educator preparation unit shall prepare and submit to the Education Professional Standards Board for each principal preparation program for which the institution is seeking approval a concise description of the preparation program which shall provide the following documented information:

(a) Signed collaborative agreements with school districts that include the following:

1. Joint screening of principal candidates by both district and university;

2. Joint identification of potential program leaders and mentors;

3. District and university code sign and codelivery of courses; and

4. The manner in which the principal preparation program is based on the identified leadership needs of each district;

(b) The protocol for screening applicants that ensures the identification and admission of high quality candidates into the pro-

gram;

(c) A matrix that illustrates the alignment between the standards and performance indicators identified in Section 3 of this administrative regulation and the program's curriculum and field experiences;

(d) A syllabus for each of the program's required courses identified in the documentation required by paragraph (c) of this subsection;

(e) The program's plan to collaborate with academic disciplines and programs outside of the field of education in order to supplement the candidate's knowledge and skills set;

(f) The program's plan to collaborate with each district in providing high quality field experiences that:

1. Enhance courses throughout the entire program;

2. Ensure that the candidate has a continuum of school-based experiences that range from observing, to participating, to leading; and

3. Expose the candidate to diverse student populations and school environments;

(g) The program's plan to use rigorous formative and summative evaluations of each candidate's:

1. Knowledge and skills to advocate, nurture, and sustain a school culture that promotes and supports high levels of learning for all students; and

2. Knowledge and skills to manage a school for efficiency, accountability, and safety; and

(h) The program's plan to require all candidates to conduct a capstone project and defend it to a panel of program faculty and practicing school administrators at the end of Level I preparation.

Section 5. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. An applicant for certification as a school principal, including career and technical school[~~vocational~~] principal, shall attain the specified minimum score on the assessments required by 16 KAR 6:030.

Section 6. Statement of Eligibility for Internship. (1) A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(a) Has successfully completed an approved program of preparation;

(b) Has three (3) years of full-time teaching experience; and

(c) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period for completion of assessments under KRS 161.027(6).

(2) Application shall be made on "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010.

(3) A request for renewal of the Statement of Eligibility pursuant to KRS 161.027(7) shall be made on Form TC-2, incorporated by reference in 16 KAR 4:060.

Section 7. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 16 KAR 7:020.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) Each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require successful completion of two (2) years of experience as a school principal within the preceding five (5) years.

(4) If the applicant has not successfully completed the two (2) years of experience as required by subsection (3) of this section, pursuant to KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership-school principal, level II, shall require:

(a) Completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed; or

(b) Successful completion of forty-two (42) hours of approved training selected from programs approved by the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

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

(a) "Dispositions, Dimensions, and Functions for School Leaders" adapted from the "Kentucky Cohesive Leadership System Continuum for Principal Preparation and Development" by the Education Professional Standards Board, May 2008;

(b) "Educational Leadership Policy Standards: ISLLC 2008", as adopted by the National Policy Board for Educational Administration, December 12, 2007; and

(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Drive, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: October 25, 2010

FILED WITH LRC: November 5, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 2010 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the preparation and certification program for school principals.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to inform principal candidates of the minimum requirements to enter a Kentucky principal preparation program and to notify teacher educator institutions of the standards and procedures that shall be met in order to offer an approved principal preparation program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.027 requires the Education Professional Standards Board to establish by administrative regulation the requirements for a preparation program in institution of higher education for all new applicants for principal certification and establish criteria for admission to the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of principal preparation 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: This amendment corrects a drafting error in a previous amendment so that candidates who have three (3) years experience teaching in a nonpublic school that is regionally or nationally accredited may enter into a principal program. This amendment also removes the expiration period for the principal redesign review committee and replaces the word "vocational" with term "career and technical."

(b) The necessity of the amendment to this administrative regulation: This amendment standardizes language for career and technical staff and corrects a prior drafting error which misaligned the regulation with other educational statutes that allowed teaching service in a nonpublic school that is regionally or nationally accredited. This regulation also makes the principal redesign review committee a permanent committee ensuring that all future accredited principal programs will be reviewed under the same rigorous standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.027 requires the Education Professional Standards Board to establish by administrative regulation the requirements for a preparation program in institution of higher education for all new applicants for principal certification and establish criteria for admission to the program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of principal preparation programs.

(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 eleven (11) currently approved principal preparation programs in Kentucky, institutions of higher learning that might seek approval to offer principal preparation programs in the future, the 174 school districts in Kentucky, and principal preparation candidates.

(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: Any institution which chooses to offer a principal preparation program must submit the program to review by the principal redesign review committee prior to final review by the Education Professional Standards Board. Principal candidates will have the option of completing the required three (3) years of teaching experience at a nonpublic school that is state or regionally accredited. School districts will not have any 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 should be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Principal candidates shall have more opportunities to meet the prerequisites for entrance into preparation programs. School districts will benefit from better prepared school leaders and collaborative relationships with institutions of higher learning. Institutions of higher learning will benefit from offering an advanced program which involves the school districts.

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

(a) Initially: There will be additional cost.

(b) On a continuing basis: There should be no additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were directly or indirectly increased.

(9) TIERING: Is tiering applied? No, all institutions of higher learning shall be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, local school districts, and state funded institutions of higher education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.027, 161.028, and 161.030

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? This regulation should not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The members of the principal redesign committee are all volunteers and the only cost associated with their service is travel expenses. It is not possible to estimate the total amount of travel related expenses per year since the committee only meets on as needed basis when programs are submitted.

(d) How much will it cost to administer this program for subsequent years? There should be 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: The members of the principal redesign committee are all volunteers and the only cost associated with their service is travel expenses. It is not possible to estimate the total amount of travel related expenses per year since the committee only meets on as needed basis when programs are submitted.

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 1:030. Election finance statement forms; campaign contributions or expenditures in excess of $3,000.

RELATES TO: KRS 121.180(1)

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation specifies the forms to be used by candidates, slates of candidates,[~~campaigns~~] and committees and incorporates those forms by reference. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121.

Section 1. The following candidates, slates of candidates, and committees shall file the reports required by KRS 121.180 on the forms incorporated by reference in this administrative regulation:

(1) Candidate campaign funds, gubernatorial slate campaign funds, and[~~candidate~~] campaign committees receiving contributions or making expenditures in excess of $3,000; and

(2) All permanent committees, political issues committees, caucus campaign committees, inaugural committees, and political party executive committees regardless of the amount of contributions or expenditures.

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

(a) "Election Finance Statement", reference KREF 006, revised 10/2010[~~05/2005~~];

(b) "County Executive and District Committee Election Finance Statement", reference KREF 006/E-C&D, revised 10/2010[~~KREF 006E_ C & D, revised 05/2005~~];

(c) "State Executive Committee Election Finance Statement", reference KREF 006/E-S, revised 10/2010[~~KREF 006/E-S, revised 05/2005~~];

(d) "Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 10/2010[~~05/2005~~];

(e) "Permanent Committee (PAC) Election Finance Statement", reference KREF 006/P, revised 10/2010[~~05/2005~~]; and

(f) "Caucus Campaign Committee Election Finance Statement", reference KREF 006/C, revised 10/2010[~~05/2005~~].

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

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: October 20, 2010

FILED WITH LRC: November 2, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2010 at 9 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 January 3, 2011. 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: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation amends existing forms for the filing of election finance statements by candidates, slates of candidates, and committees, which includes the following specific committee types: campaign committees, county executive committees, district executive committees, state executive committees, permanent committees, caucus campaign committees, and inaugural committees.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) and 121.120(4) require the registry to promulgate this administrative regulation. Changes to existing forms for the filing of Election Finance Statements were necessitated by the passage of 2010 HB 88, effective November 3, 2010. 2010 HB 88 amends KRS 121.180 to require the registry to include an entry reading, "No change since last report." on each paper and electronic form that it supplies for the filing of an election finance statement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of KRS Chapter 121, and 121.120(4), as it prescribes a form for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180 and specifically complies with the provisions of 2010 HB 88.

(2) If 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 the latest version of official reporting forms for the filing of election finance statements by all regulated persons and entities. The amendment further clarifies that gubernatorial slates and all campaign committees who receive contributions or make expenditures in excess of $3,000 are subject to regulation. The inclusion of gubernatorial slates and deletion of "candidate" from campaign committees is a housekeeping measure only. Gubernatorial slates and campaign committees not authorized by any candidate are recognized under existing law (see KRS 121.015(9) and 121.015(3)(a), respectively), and are required to file election finance statements on the same reporting schedule as candidates and campaign committees authorized by candidates.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the registry to adopt official forms and, more specifically, to develop prescribed forms for the making of required reports. 2010 HB 88 requires the registry to include an entry reading, "No change since last report." on each paper and electronic form that it supplies for the filing of election finance statements. Amendment to the administrative regulation is necessary to bring the registry's forms into compliance with 2010 HB 88.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the Election Finance Statement forms to be filed by regulated entities and persons into compliance with changes in KRS 121.180 due to the passage of 2010 HB 88 and will further assist in the effective administration of the reporting requirements specified in KRS 121.180.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, and committees required to file reports with the registry will be affected by this administrative regulation. However, this regulation does not create a new requirement as this is a form change only. To the extent the public, media, and other interest groups depend on the registry's disclosure function, they will also 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: No action will be required of the regulated entities. The registry will provide the new forms, both in hard copy format and electronically, to the regulated entities. The change, necessitated by 2010 HB 88, requires the registry to include an entry reading, "No change since last report." on its reporting forms for a filer to designate, if the filer has received no money, loans or other things of value from any source since the date of the last report and has not authorized, incurred, or made any expenditures since that date, during any applicable reporting period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the reporting form will simplify the process of reporting by those candidates, gubernatorial slates and committees that have received no contributions and made no expenditures during any applicable reporting period by providing a check box for "No change since last report." A filer designating "No change since last report." shall only be required to

state the balance carried forward from the last report but need not specify receipts or expenditures in further detail, per 2010 HB 88.

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

(a) Initially: Initial costs to administer the program are estimated to be less than $5,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the registry's budget.

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

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all candidates, slates of candidates, and committees.

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? Commonwealth of Kentucky - General Government - registry of Election Finance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), 121.180 (1),(2),(3), (6) and 2010 HB 88.

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 as a result of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? Changes to the registry's "Election Finance Statement" forms necessitated by 2010 HB 88 will result in an additional cost of $5,000 to the registry of Election Finance in year one, for the printing of new forms and the necessary programming updates to the agency's electronic filing system, to display campaign finance data electronically in the format mandated by 2010 HB 88.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None

Expenditures (+/-): + $5,000 in year one (1) no additional costs in subsequent years.

Other Explanation: N/A

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 1:190. Forms for gubernatorial slates of candidates and related filers.

RELATES TO: KRS 121.160(1), 121.180(3), (9)

STATUTORY AUTHORITY: KRS 121.120(1)(g),(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Kentucky Registry of Election Finance to promulgate administrative regulations and official forms necessary to carry out the provisions of KRS Chapter 121, relating to the registration and reporting by slates of candidates for Governor and Lieutenant Governor. This administrative regulation establishes those forms.

Section 1. Gubernatorial Slates of Candidates Forms. The forms incorporated by reference in Section 2(1)(a) and (b)[~~Section 3(1)(a) through (c)~~] of this administrative regulation, shall be the official forms for slates of candidates for Governor and Lieutenant Governor.

Section 2. [~~Media Reporting. "Gubernatorial Slate Media Report" incorporated by reference in Section 3(1)(d) of this administrative regulation, shall be the official reporting form for mass media organizations and other entities required to file with the Kentucky Registry under KRS 121.180(11)(a). A radio or television station or network shall not be required to file any information other than the information set forth under KRS 121.180(11)(b).~~

~~Section 3.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Slate of Candidates Appointment of Campaign Treasurer" form, KREF 001/G, revised 05/2005; and

(b) "Gubernatorial Slate Campaign Committee Registration" form, KREF 010/G, revised 05/2005[~~;~~

~~(c) "Notice of Gubernatorial Slate Replacement" form, KREF 034/G, revised 05/2005; and~~

~~(d) "Gubernatorial Slate Media Report" form, KREF 040/G, revised 05/2005~~].

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

CRAIG C. DILGER, CHAIRMAN

APPROVED BY AGENCY: October 20, 2010

FILED WITH LRC: November 2, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2010 at 9a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 January 3, 2011. 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: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation deletes official forms previously required from gubernatorial slate media providers and gubernatorial slates. The forms are obsolete due to 2010 HB 151 and KRS 118.227(1)(b).

(b) The necessity of this administrative regulation: KRS 121.120(4) requires the Registry to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports. The forms previously prescribed are no longer required due to changes in the law, specifically 2010 HB 151, which deletes the requirement of a "Gubernatorial Slate Media Report" and KRS 118.227(1)(b), which requires gubernatorial slate replacement forms to be filed with the Secretary of State on a form promulgated by the State Board of Elections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the registration and reporting requirements under KRS 121.160(1), 121.180(3) and 121.180(9).

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the following obsolete forms: KREF Form 040/G - "Gubernatorial Slate Media Report" and KREF Form 034/G - "Notice of Gubernatorial Slate Replacement".

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms and, more specifically, to develop prescribed forms for the making of reports. Certain prescribed forms are now obsolete due to 2010 HB 151 and KRS 118.227(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121 and 121.120(4) by prescribing forms for the making of reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the effective administration of the registration and reporting requirements under KRS 121.160(1), 121.180(3), and 121.180(9).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All gubernatorial slate media providers and gubernatorial slates 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: No actions will be required of the regulated entities to comply with this amendment.

(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 by entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment deletes forms that are obsolete. The amendment will benefit regulated entities by deleting former requirements that no longer exist.

(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 the implementation of this administrative regulation initially.

(b) On a continuing basis: There will be no costs associated with implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funds will be used for the implementation and enforcement of this administrative regulation should there be any costs 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals and entities affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The only state or local government entity impacted by this administrative regulation will be the Kentucky Registry of Election Finance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(4), 121.160(1), 121.180(3) and 121.180(9).

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 for state or local government due to the implementation of this administrative regulation in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated for state or local government due to the implementation of this administrative regulation for subsequent years.

(c) How much will it cost to administer this program for the first year? As this administrative regulation deletes obsolete forms, costs to administer this program, if any, will be minimal and consist of staff time necessary to review Registry materials to delete references to the obsolete forms and prior reporting requirements.

(d) How much will it cost to administer this program for subsequent years? There will be no cost associated with the implementation of this administrative regulation for subsequent years.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Crime Victims' Compensation Board

107 KAR 2:010. Payment schedule for medical examination of reported victims of sexual offenses.

RELATES TO: KRS 216B.400, 314.142, Chapter 346, Chapter 510

STATUTORY AUTHORITY: KRS 216B.400, 2003 Ky. Acts ch. 156, Part IX, 53

NECESSITY, FUNCTION, AND CONFORMITY: KRS

216B.400 requires that examinations for victims of sexual assault shall be paid for by the Crime Victims' Compensation Board at a rate determined by the board after consultation with the Sexual Assault Response Team Advisory Committee. This administrative regulation establishes the payment schedule for sexual assault examinations. [~~2003 Ky. Acts ch. 156, Part IX, 53, requires that during fiscal year 2003-2004 examinations for reported victims of sexual assault shall be paid by the Crime Victims Compensation Board at a rate set by the board, notwithstanding KRS 216B.400. The board shall reimburse the hospital, sexual assault examination facility, physician, or sexual assault nurse examiner for the examination of reported victims of sexual offenses as provided in administrative regulations promulgated by the board. This administrative regulation establishes a standard payment rate for hospitals, sexual assault examination facilities, physicians, and sexual assault nurse examiners for services rendered pursuant to KRS 216B.400.~~]

Section 1. Definition. "Sexual assault examination" means the forensic-medical examination and related services established by KRS 216B.400 and 502 KAR 12:010.

Section2. [~~The~~] Reimbursement for [~~a physician, sexual assault nurse examiner, hospital, or sexual assault examination facility for~~] performing a sexual assault examination shall be the actual amount billed, not to exceed the following limits:

(1) A physician, [~~or~~] sexual assault nurse examiner, or another qualified medical professional as defined in 502 KAR 12:010, performing the examination - $200.

(2) A hospital or sexual assault examination facility for use of an emergency or examination room - $250.

(3) A hospital, sexual assault examination facility, or laboratory to perform diagnostic laboratory testing - $100.

(4) A hospital or sexual assault examination facility for medications and pharmaceuticals prescribed as a result of the examination and as part of basic treatment - $100.

Section 3. Reimbursement for additional services related to a sexual assault examination requiring HIV postexposure prophylaxis shall be the actual amount billed, not to exceed the following limits:

(1) Follow-up examinations - $150, not to exceed a total of fifty (50) dollars per examination;

(2) Laboratory testing:

(a) Initial testing - $225; and

(b) Follow-up testing - $165, not to exceed:

1. Ninety (90) dollars for testing conducted after day twelve (12) of prophylactic treatment; and

2. Seventy five (75) dollars for testing conducted near or at the end of prophylactic treatment; and

(3) Medications:

(a) Twenty-eight (28) day supply of HIV prophylaxis medication - $800, not to exceed:

1. $200 for the first seven (7) day supply; and

2. $600 for the remaining twenty-one (21) day supply; and

(b) Twenty-eight (28) day supply of anti-nausea medication - not to exceed:

1. $200 for the first seven (7) day supply; and

2. $600 for the remaining twenty-one (21) day supply; and

(b) Twenty-eight (28) day supply of anti-nausea medication - not to exceed thirty (30) dollars.

This is to certify that the Sexual Assault Response Team Advisory Committee has consul.ted with the Crime Victims' Compensation Board on this administrative regulation prior to its adoption, as required by KRS 216B.400(8)(a).

JO ANN PHILLIPS, CVCB Chair
EILEEN RECTENWALD, Advisory Committee Co-chair
MAJOR LYNN CROSS, Advisory Committee Co-chair

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: November 9, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, December 21, 2010 at 10:30 a.m. Eastern Time at the Crime Victims Compensation Board Room, 130 Brighton Park Blvd., Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 January 3, 2011. 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: Lindsay Crawford, policy advisor, Crime Victims Compensation Board, 130 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-2290, fax (502) 573-4817.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Crawford, (502) 573-2290

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides a treatment and payment schedule for administering HIV prophylactics to potentially infected sexual assault victims who present for sexual assault exams as defined in KRS Chapter 216B.

(b) The necessity of this administrative regulation: To protect human health and bring agency into statutory compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It will provide a payment schedule for implementing KRS 216B.400(8)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
It will provide predetermined amounts for which medical providers can bill agency for services associated with HIV screening and treatment of sexual assault victims.

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

(a) How the amendment will change this existing administrative regulation: It will add a new section (Section 3) to 107 KAR 2:010, that will lay out a treatment schedule and payment schedule for medical personnel serving crime victims who are given prophylactic HIV treatment.

(b) The necessity of the amendment to this administrative regulation: To protect human health and bring the agency into compliance with existing law KRS 216B.400(8)(a).

(c) How the amendment conforms to the content of the authorizing statutes: It will provide a payment schedule for implementing KRS 216B.400(8)(a).

(d) How the amendment will assist in the effective administration of the statutes: It will provide predetermined amounts for which medical providers can bill for services associated with HIV screening and treatment of sexual assault victims.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect hospitals that provide emergency services (125), other sexual assault examination facilities (15), an unknown number of emergency room physicians and 400 Sexual Assault Nurse Examiners who provide sexual assault exams (SAFE Exams). It also affects approximately 1,100 individuals per year who are sexually assaulted and are provided a SAFE Exam.

(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: As mandated in KRS Chapter 216B and 902 KAR 20:012, and with consent of the victim, they shall provide for the examination of reported victims of sexual offenses, part of which shall include HIV prophylactic screening and treatment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The result of compliance will be protection of human health.

(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: Roughly estimated at $100,000 annually, but at this time there is no accurate way on which to base an estimate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and restricted money coming from a federal grant and from a percentage of state court 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: Any necessary increase would be totally dependent on how many cases we get, and at this point it would be impossible to project because it would depend on the screening done by ER medical personnel and whether the victim chooses to take the medication, which causes very undesirable side effects.

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

(9) TIERING: Is tiering applied? The added section to this regulation, Section 3, only applies to those sexual assault victims, through screening, who are found to be at risk of HIV exposure.

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? Crime Victims Compensation Board / Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 261B

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. Estimated potential expenditure of $100,000, but at this time there is no accurate way on which to base an estimate.

(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? N/A

(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? N/A

(c) How much will it cost to administer this program for the first year? It is part of an already existing program, so most of the cost is already factored into the agency's exiting administrative budget.

(d) How much will it cost to administer this program for subsequent years? See above.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:065. Individual license renewal and fee.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240, 325.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330 authorizes the board to promulgate administrative regulations establishing license renewal procedures for certified public accountants. This administrative regulation establishes the procedures and fees for a certified public accountant to renew a license.

Section 1. A certified public accountant seeking to renew his or her license shall:

(1) Utilize the online procedure offered by the board at www.cpa.ky.gov; and

(2) Pay a renewal fee in the amount of $100.

Section 2. If a certified public accountant is unable to utilize the online procedure, he or she shall:

(1) Submit a written request to obtain a paper application to the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202;

(2) Complete and submit the application to the board; and

(3) Submit a check or money order made payable to the Kentucky State Board of Accountancy in the amount of $100.

Section 3. A license shall expire on August[~~July 1~~] of the second year following the date it was issued and shall be subject to renewal as follows:

(1) Even-numbered licenses shall be renewed in even-numbered years; and

(2) Odd-numbered licenses shall be renewed in odd-numbered years.

Section 4. The board shall notify a licensee that his or her license is due to expire.

Section 5. Incorporation by Reference. (1) "License Renewal Application", 2010[~~2009~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

KEVIN DOYLE, CPA, President

APPROVED BY AGENCY: November 4, 2010

FILED WITH LRC: November 8, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2010 at 10 a.m., at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 January 3, 2011. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedures to be followed to renew a CPA license.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the procedures to renew their license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.330(7) describes the license

renewal process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By having CPAs be aware of the process to renew their license.

(2) If 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 license renewal date is being changed from July 1 to August 1 to reflect statutory change made in 2010.

(b) The necessity of the amendment to this administrative regulation: To reflect the new license expiration date that was changed by statute in 2010.

(c) How the amendment conforms to the content of the authorizing statutes: Incorporates the new license expiration date.

(d) How the amendment will assist in the effective administration of the statutes: Incorporates the proper license expiration date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 3,500 CPAs 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: The license expiration date is changed from July 1 to August 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing other than the current $100 fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The license renewal date is moved back one month.

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

(a) Initially: No increase from current expenses.

(b) On a continuing basis: No increase from current expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board operates solely on the funds contained its trust and agency account.

(7) Provide an assessment of whether an 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 necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? Tiering is not applied since CPAs may still choose to renew with a paper application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.330(7)

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? No new expenses.

(d) How much will it cost to administer this program for subsequent years? No new expenses.

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 amendment to this regulation is to reflect the change in the law in 2010 to move the license expiration date from July 1 to August 1 so there is no fiscal impact.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:140. Procedures for the reinstatement and reissuance of a license.

RELATES TO: KRS 325.330(6), 325.370

STATUTORY AUTHORITY: KRS 325.240, 325.330(6), (7), 325.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330(6) and (7) and 325.370 authorize the board to reinstate and reissue licenses that have expired, been suspended, revoked or denied renewal. This administrative regulation establishes the procedures for reinstating and reissuing a license.

Section 1. Definition. "Accounting or[~~and~~] auditing course" means a field of study dealing with pronouncements of authoritative accounting principles issued by the standard setting bodies and other related subjects generally classified with the accounting discipline and shall include auditing subjects related to the examination of financial statements, operations, systems and programs; the review of internal and management controls; the reporting on the results of audit findings; compilations; and reviews but shall not include courses in tax and computer software training classes shall not meet this definition.

Section 2. A licensee who failed to renew his license by the August[~~July~~] 1 deadline shall be allowed to renew his or her license by complying with the requirements of KRS 325.330(4)(a), (b), (c) and (d), 201 KAR 1:100, 201 KAR 1:065, and paying a $100[~~the following~~] late fee so long as the[~~based on the date~~] license is renewed on line on or before September 1 or the renewal materials and payment are received at the board office on or before September 1[~~:~~

~~(1) Twenty-five (25) dollars between July 2 and August 31;~~

~~(2) Fifty (50) dollars between September 1 and October 31;~~

~~(3) $100 dollars between November 1 and December 31~~].

Section 3. (1) A license expired for a period of more than one (1) month[~~six (6) months~~] or voluntarily surrendered for any reason except when a complaint is pending before the board may be considered by the board for reinstatement[~~reinstated~~] if the applicant submits a completed "License Reinstatement Application" that includes the following information:

(a) Documentation of successful completion of either sixty (60) or eighty (80) hours of continuing professional education, of which one-half (1/2) are accounting or[~~and~~] auditing courses. Included within sixty (60) or eighty (80) hours shall be two (2) hours of coursework in professional ethics. The applicant shall complete either sixty (60) or eighty (80) hours of continuing professional education courses based upon the amount of hours the applicant was to have completed when their license expired or voluntarily surrendered.[~~;~~]

(b) The hours shall:

1. Have been completed within two (2) years of the reinstatement request; and

2. Not have been previously used to satisfy Kentucky license renewal requirements.

(c) A money order or check in the amount of $200 made payable to the Kentucky State Board of Accountancy.

(2) An individual who at the time of submitting an application is

actively licensed in another state that maintains a continuing education requirement shall satisfy all of the requirements of this section except for the continuing education hours described in subsection (1)(a) and (b) of this section.

Section 4. (1) If a license was revoked for reasons other than failure to satisfy the continuing professional education requirements, it may be considered for reinstatement if the applicant for reinstatement submits to the board fifteen (15) days prior to the next scheduled meeting:

(a) A letter:

1. Requesting reinstatement;

2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of the board; and

3. A statement of the reasons the board should reinstate him or her.

(2)(a) Except as provided in paragraph (b) of this subsection, the board:

1. Shall review the request for reinstatement; the findings of fact, conclusions of law, and board order; and

2. May affirm or deny the request; or

3. State in writing the corrective or remedial education, training or review required before reinstatement shall be granted.

(b) The board may decline to consider a request for reinstatement submitted to the board prior to the date for resubmission that is specified in the disciplinary order of the board.

(3)(a) If an applicant for reinstatement disagrees with the board's determination under this section, he or she may file a written request for a hearing before the board.

(b) A hearing held pursuant to the provisions of this subsection shall be conducted in accordance with KRS 325.360 and 201 KAR 1:150.

Section 5. Incorporation by Reference. (1) "Reinstatement License Application (2010[~~2001~~])", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

KEVIN DOYLCE, President

APPROVED BY AGENCY: November 4, 2010

FILED WITH LRC: November 8, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2010 at 10 a.m., at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 January 3, 2011. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedures to be followed to renew an expired license during a (1) month grace period and to reinstate a license.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the procedures to renew their license for a period of (1) one month after it expires and to reinstate their license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.330 requires CPAs to comply with the renewal and reinstatement process promulgated in an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By having CPAs be aware of the process to renew their license during a (1) month grace period following its expiration and to reinstate their license.

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

(a) How the amendment will change this existing administrative regulation: It will include changes made to the law in 2010 that decreases the grace period from (6) six to (1) month for CPAs to renew their license after it expires and to allow CPAs to reinstate their licenses.

(b) The necessity of the amendment to this administrative regulation: The current regulation does not include changes made in 2010 to the late renewal and reinstatement process.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation adopts the new grace period and changes to the reinstatement process made to the statute in 2010.

(d) How the amendment will assist in the effective administration of the statutes: The amendment includes changes made in 2010 to the statute that governs the late renewal and reinstatement process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 7,000 CPAs.

(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: Due to the change in the statute CPAs will now only have a (1) one month grace period after their license expires to renew their license. Under the previous law they had up to (6) six months to renew an expired license. Also the CPAs who were not practicing public accounting at the time they failed to renew their license will only have to complete (60) sixty hours of CPE, as opposed to (80) eighty hours, (2) two of which must be an ethics course to be eligible to reinstate their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For those CPAs seeking to reinstate their license there is no change in the fee which is currently $200. For those CPAs seeking to renew their license during the (1) one month grace period grace period following the expiration of their license the fee will increase from the current $125 to $200. However under the previous late renewal process a CPA was charged a $200 fee if they renewed their license from Nov 3 through Dec 31 of their renewal year. Therefore the highest late renewal fee under the old standard is now being charged for the grace period under the new standard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The date to renew their license is moved back one month. Also CPAs who were not practicing public accounting when they failed to renew their license (which meant they had to complete only sixty (60) as opposed to eighty (80) hours of CPE) will be able to reinstate their license by completing only sixty (60) instead of eighty (80) hours of CPE.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board operates solely on the funds contained its trust and agency account.

(7) Provide an assessment of whether an 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 necessary. There are sufficient funds in the Board's trust and agency account to cover these costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no increase in the fee for a license to be reinstated. There is an increase in the late renewal fee but under the old renewal process some CPAs were charged the $200 fee if they waited 6 months to renew their license after it expired.

(9) TIERING: Is tiering applied? Tiering is not applied since all CPAs seeking to reinstate their license 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? State Board of Accountancy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.330(7)

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? As of July 2010 the individual license renewal fees received totaled $336,675 for the board. The license reinstatement fees totaled $400. Of course these fees were placed into the board trust account for the purpose of paying all expenses to operate the board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately the same amounts as listed above.

(c) How much will it cost to administer this program for the first year? No increase in current expenses.

(d) How much will it cost to administer this program for subsequent years? No increase in current expenses.

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
State Board of Examiners and Registration of Landscape Architects
(Amendment)

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.070, 323A.100(1), (4)

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid as applicable:

(1) Renewal fees:

(a) Active license: $200 [~~$170~~].

(b) Inactive license: $150.

(2) Duplicate certificate: twenty-five (25) dollars.

(3) Issuance of original license certificate: $200.

(4) Restoration of a suspended license: renewal fee established in subsection (1) of this section, plus an amount calculated pursuant to KRS 323A.100(1).

(5) Reactivation fee: $170.

(6) Reciprocal application fee issuance of a license on reciprocity basis: $250.

(7) Examination:

(a) Processing fee. A $100 nonrefundable processing fee shall be submitted with a new application for examination.

(b) Examination sections:

1. Section C: $295.

2. Section E: $295.

THOMAS J. NIEMAN, President

APPROVED BY AGENCY: November 15, 2010

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

PUBLIC HEARING and WRITTEN COMMENTS: A public hearing on this administrative regulation shall be held on December 22, 2010 at 10 a.m. at the Board's office, 3rd Floor Conference Room, 163 West Short Street, Lexington, Kentucky 40507. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 2010, 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 4:00 pm on January 3, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jane Gardner, Executive Director, Board of Examiners and Registration of Landscape Architects, 163 West Short Street, Suite 351, Lexington, Kentucky 40507, phone No. (859) 246-2753, fax (859) 246-2754.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jane Gardner, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets fees.

(b) The necessity of this administrative regulation: This regulation is necessary to apprise interested individuals of the fees charged by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323A.060 that requires the board to promulgate administrative regulations to establish fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation apprises interested individuals of the fees charged by the board.

(2) If 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 states the cost of renewing an Active license in the Commonwealth for individuals who currently hold a license in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: This amendment increases an existing fee.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the board to establish fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will generate revenue to meet the board's expenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates this regulation will affect approximately 250 individuals, while affecting no businesses, organizations, state or local governments.

(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, in-

cluding:

(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 individuals affected will pay $30 more than they currently do to renew their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): $30.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will continue to be served by a financially stable board.

(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 change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As this regulation establishes fees, no additional 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 is required 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 will increase the active renewal fee for licensees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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)?

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 impact current Kentucky landscape architects who renew their license to practice landscape architecture in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.060 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. This amendment will not affect the expenditures of the agency, but could increase revenues by as much as $7,500 annually.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The exact amount is not known, as it depends upon license renewals, but it could increase revenues as much as $7,500.

(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 to the administrative regulation could generate as much as $7,500 annually.

(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 Examiners of Psychology
(Amendment)

201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.010(7)[~~319.010(6)~~] includes in the practice of psychology psychological testing in the administering and interpreting of tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The intent of this administrative regulation is to provide a definition of psychological testing sufficient to allow this board to regulate effectively this aspect of psychological practice. The ability to administer and interpret psychological testing assumes formal academic training at the graduate level in statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes assumes formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also requires formal supervised practice experience.

Section 1. Definitions. "Psychological testing" means the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

Section 2. Psychological Tests. (1) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:

(a) The Wechsler series;

(b) The Stanford-Binet; and

(c) The Kaufman Assessment Battery for Children.

(2) Individual, objective and projective tests of personality and emotional states and traits, examples of which are:

(a) The Minnesota Multiphasic Personality Inventory; and

(b) The Millon Clinical Multiaxial Inventory;

(c) The Millon Adolescent Clinical Inventory; and

(d) Projective techniques including:

1. The Rorschach Ink Blots;

2. Thematic Apperception Test; and

3. The Holtzman Ink Blots.

(3) Individual tests of neuropsychological functioning, examples of which are:

(a) The Halstead-Reitan Battery;

(b) The Luria-Nebraska Battery;

(c) The "Lezak or Kaplan Battery"; and

(d) The NEPSY.

Section 3. Services which are described as "psychological testing" may only be administered and interpreted by persons credentialed by this board or who meet the formal academic training and experience qualifications described above and who are otherwise exempt by statute.

(1) Persons credentialed by this board, as well as other licensed or certified professionals, may also use tests of language, education and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation.

(2) Members of other professions may not train or supervise any person in performing psychological testing.

(3) The practice of psychology shall be construed within the

meaning of the definition contained in KRS 319.010(7)[~~319.010(6)~~] without regard to whether payment is received for services rendered.

(4) Services which are described as "psychological testing and treatment" may be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

FILED WITH LRC: November 12, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation references the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7) and establishes those tests which are psychological tests.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reference the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7) and establishes those tests which are psychological tests.

(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 reference to specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7) and establishes those tests which are psychological tests.

(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 reference to the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7) and establishes those tests which are psychological tests.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by reference to the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7).

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reference the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by reference to the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by reference to the specific statutory inclusion of psychological testing in the practice of psychology defined by KRS 319.010(7).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 1,400 credential holders of the board, that is, all the psychologists credentialed in Kentucky, but only if the credential holder uses psychological testing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky-licensed psychologists who use psychological testing will have to identify tests which are psychological tests.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Kentucky-licensed psychologists who use psychological testing will have tests which are clearly defined as psychological tests and will substantially less at risk for professional liability and for possible violations of KRS Chapter 319.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all Kentucky-licensed psychologists who use psychological testing.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032 and 319.010.

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 Examiners of Psychology
(Amendment)

201 KAR 26:121. Scope of practice and dual credentialing.

RELATES TO: KRS 319.032(1)(b), 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining scope of practice within the field of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners. It also provides guidance about scope of practice for credential holders of this board who also hold mental health credentials from another regulatory board.

Section 1. A credential holder shall not practice or present himself or herself outside the area or areas of competency specified in the application for a credential and approved by the board based upon examination and review of qualifications, training, and experience, unless the credential holder has obtained additional education, training, experience, or supervision appropriate to the new practice area.

Section 2. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a licensed psychologist, a certified psychologist with autonomous functioning, a certified psychologist, a licensed psychologist associate, or a licensed psychological practitioner may:

(a) Work in various health care service delivery settings; and

(b) Provide one (1) or more of the following direct or supportive services:

1. Diagnosis of an emotional, mental, or nervous disorder, including substance abuse or an adjustment problem of an individual or group through the use of psychological testing or other technique;

2. Evaluation or assessment of the functioning of an individual, group, or organization;

3. Treatment and amelioration of an emotional, mental, or nervous disorder, substance abuse, or an adjustment problem of an individual or group;

4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization;

5. Consultation services;

6. Program planning or development services;

7. Evaluation of a psychological or human service program; or

8. Supervision of health service delivery as described in 201 KAR 26:171.

(2) All credential holders from this board shall restrict their practice to the delivery of specific services for which they are competent based on professional education, training, and experience.

Section 3. Dual Credentialing. (1) An individual who holds both a credential to practice psychology from this board and a mental health credential from another regulatory board authorized by Kentucky statute shall:

(a) Maintain separate and distinct practices in relation to each credential;

(b) Inform the recipient of a particular service under which credential the provider is practicing;

(c) Demonstrate that representations about the practice, including letterhead, signs, invoices, and advertisements, and the activities of the practice, are designed to maintain those distinctions; and

(d) Not deliver psychological services as defined by KRS 319.010 under the auspices of another credential, recognizing that some activities are exempted by KRS 319.015.

(2) Psychological testing, as defined by 201 KAR 26:115, shall not be delivered under a credential other than that issued by the Board of Examiners of Psychology.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation includes licensed psychologists who are the subject of the requirements of this administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to include licensed psychologists as the subject of the requirements of this administrative regulation in addition to the other credential holders of the board for whom this administrative regulation already applies.

(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 including licensed psychologists as the subject of the requirements of this administrative regulation along with other credential holders of the board for whom this administrative regulation already applies.

(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 including licensed psychologists as the subject of the requirements of this administrative regulation along with other credential holders of the board for whom this administrative regulation already applies.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by including licensed psychologists as the subject of the requirements of this administrative regulation along with other credential holders of the board for whom this administrative regulation already applies.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to include licensed psychologists as the subject of the requirements of this administrative regulation along with other credential holders of the board for whom this administrative regulation already applies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by including licensed psychologists as the subject of the requirements of this administrative regulation along with other credential holders of the board for whom this administrative regulation already applies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by including licensed psychologists as the subject of the requirements of this administrative regulation along with other credential holders of the board for whom this administrative regulation already applies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 1,400 credential holders of the board, that is, all the psychologists credentialed in Kentucky, but only if the credential holder also holds another credential to practice a mental health profession issued by the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky-licensed psychologists who hold another credential to practice a mental health profession issued by the Commonwealth of Kentucky will have to comply with the requirements of this administrative regulation, which already apply to other such credential holders of the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Kentucky-licensed psychologists who hold another credential to practice a mental health profession issued by the Commonwealth of Kentucky will be substantially less at risk for professional liability and for possible violations of KRS Chapter 319 or other statutes of the mental health profession issued by 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 initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all Kentucky-licensed psychologists who use psychological testing.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(b) and 319.050(7).

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 Examiners of Psychology
(Amendment)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) provides that the designation of "health service provider" shall be granted for a licensed psychologist who [~~delivers or~~] supervises a psychological health care service. This administrative regulation establishes the requirements for the granting of that designation.

Section 1. The designation "health service provider" shall refer to[~~:~~

~~(1)~~] a licensed psychologist defined in KRS 319.050(7) who is authorized to supervise[~~:~~

~~(a) Delivers psychological health care services; or~~

~~(b) Supervises~~] a certified psychologist, temporarily licensed psychologist, licensed psychological associate, student, intern, or resident pursuing a course of graduate study in psychology in[~~; or~~

~~(2) An applicant for licensure at the doctoral level who is~~] delivering psychological health care services.

Section 2. Psychological health care services shall include delivery of diagnosis, assessment, psychotherapy, treatment, or other therapeutic services to individuals, couples, families, or groups whose growth, adjustment, or functioning is impaired or who otherwise seek psychological health care services.

Section 3. A health service [~~care~~] provider shall be a licensed psychologist who has completed appropriate training and supervised experience in psychological health service delivery at the

doctoral level. The training and experience may occur in a variety of psychological health care delivery sites and:

(1) Shall include, in addition to the supervised experience required for licensure as a licensed psychologist, 1,800 hours of supervised experience within one (1) or more health care settings in which the provider delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation; or [~~and~~]

(2) The licensed psychologist holds the Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization, or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization, or the licensed psychologist holds a Certificate from the National Register of Health Service Providers in Psychology or a successor organization and has a minimum equivalent of five (5) years of full time practice at the independent practice level and has had no disciplinary action taken by a licensure board or on record in the ASPPB data base. [~~May occur in a variety of psychological health care delivery sites.~~]

Section 4. A licensed psychologist who does not have the designation "health service provider" shall not [~~deliver or~~] supervise psychological health care services.

Section 5. In addition to completion of a doctoral training program in an area of psychological health service delivery, a candidate for health service provider designation shall complete all [~~required predoctoral and postdoctoral~~] supervised experience requirements in a health care setting as established in this administrative regulation, consistent with the requirements of 201 KAR 26:190.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(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 amending the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(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 amending the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the supervised experience and other qualifications of the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the supervised experience and other qualifications of the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the supervised experience and other qualifications of the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by amending the supervised experience and other qualifications of the requirements to be a psychologist with Health Service Provider designation who supervises other credential holders of the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 1,400 credential holders of the board, that is, all the psychologists credentialed in Kentucky, but only if the credential holder applies for the Health Service Provider designation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky-licensed psychologists who apply for the Health Service Provider designation will have to have a more easily defined supervised experience, or hold various other credentials recognized in this field.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Kentucky-licensed psychologists who apply for the Health Service Provider designation may qualify for a more easily defined supervised experience, or hold various other credentials recognized in this field.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in

fees or funding will not be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all Kentucky-licensed psychologists who use psychological testing.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(2) and 319.050(7).

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 Examiners of Psychology
(Amendment)

201 KAR 26:130. Complaint procedure.

RELATES TO: KRS 319.005, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology, or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a licensed [~~credential~~] holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed [~~credential~~] holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

Section 1. Definitions. (1) "Act" means Chapter 319 of the Kentucky Revised Statutes.

(2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or the administrative regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth charges against a licensed [~~credential~~] holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(5) "Initiating complaint" means any allegation [~~in whatever form~~] alleging misconduct by a licensed [~~credential~~] holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(6) "Order" means the whole or any part of a final disposition of a hearing.

(7) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing pursuant to KRS 319.032(1)(h), and shall include either a hearing officer or a member of the hearing panel.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. A complaint may be initiated by the board, by the public or by any governmental [~~state~~] agency. A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid complaint.

(2) Form of initiating complaint. Initiating complaints shall be in writing and shall clearly identify the person against whom the complaint is being made. Further, the complaint shall contain the date, and shall identify by signature the person making the complaint, and shall contain a clear and concise statement of the facts giving rise to the complaint.

(3) Receipt of initiating complaint. A complaint may be received by any board member, credential holder designated by the board, by the Office of the Attorney General, or by any staff member.

(4) Reply of respondent. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint within fifteen (15) days of the date on which the initiating complaint was mailed.

(5) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a panel of the board shall review the initiating complaint and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the complaint.

(6)[~~(5)~~](a) If there is reasonable cause to believe that a license [~~credential~~] holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the license [~~credential~~] holder or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the license [~~credential~~] holder's or applicant's psychological or physical status to practice psychology.

(b) The expense of this examination shall be borne by the board.

(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.

(7)[~~(6)~~] Investigation.

(a) The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the initiating complaint. [~~A copy of the complaint shall be made available to the respondent prior to the meeting.~~] The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he or she shall not vote. If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the complaint and the respondent that no further action shall be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue a formal complaint against the license [~~credential~~] holder or applicant. In the case of a prima facie violation of KRS 319.005, the board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990.

Section 3. Formal Complaint. If the board determines that the initiating complaint shall be made a formal complaint, the following actions shall be initiated:

(1) Issuance of formal complaint. The board shall provide the respondent with a written formal complaint which shall set forth:

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(2) Service of formal complaint. Service of process shall be provided in accordance with KRS 13B.050(2).

(3) Issuance of hearing notice. Notice of the hearing shall be provided as required by KRS 13B.050(1) and (3).

Section 4. Formal Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the formal complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License [~~Credential~~] Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism adopted by the board for identification.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) No investigator shall be assigned to cases where sexual misconduct has been alleged until such training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032 and may be delivered by means of either live presentation, individual tutorial, or videotape.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the complaint procedure process providing notice of an initiating complaint to a psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend complaint procedure process providing notice of an initiating complaint to a psychologist.

(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 amending the complaint procedure process providing notice of an initiating complaint to a psychologist.

(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 amending the complaint procedure process providing notice of an initiating complaint to a psychologist.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the complaint procedure process providing notice of an initiating complaint to a psychologist and by updating language to include all persons credentialed by the board.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend amending the complaint procedure process providing notice of an initiating complaint to a psychologist and by updating language to include all persons credentialed by the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the complaint procedure process providing notice of an initiating complaint to a psychologist and by updating language to include all persons credentialed by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by amending the complaint procedure process providing notice of an initiating complaint to a psychologist and by updating language to include all persons credentialed by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 1,400 credential holders of the board, that is, all the psychologists credentialed in Kentucky, but only if the credential holder has an initiating complaint filed with the board, approximately 30 cases per year.

(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: Kentucky-licensed psychologists who have an initiating complaint filed with the board, approximately thirty (30) cases per year, will have a defined amount of time to respond to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since the board already solicits a response not previously required by administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Kentucky-licensed psychologists who have an initiating complaint filed with the board, approximately thirty (30) cases per year, will benefit by having a defined amount of time to respond to the board.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the Board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all Kentucky-licensed psychologists who have an initiating complaint filed with the board.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.005, 319.032, 319.082, 319.118, 319.990.

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 Examiners of Psychology
(Amendment)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential as a licensed psychologist and for temporary licensure may be submitted after the requirements established in KRS 319.050(2) are met.

(2) The application required by subsection (1) or (2) of this section shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.); and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the national [~~Examination for Professional Practice in Psychology (~~]EPPP[~~)~~] within one (1) year of the board's written approval of temporary licensure

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the earliest of the following:

(a) The candidate's failure to pass the EPPP within one (1) year of the date of the board's approval for temporary license.

(b) The candidate's failure to pass the examinations on psychological practice, ethical principles, and the law [~~oral examination~~] within one (1) year of completion of the required supervised experience [~~postdoctoral year~~].

(c) The passage of two (2) years from issuance.

(6) Under exceptional circumstances and upon written request cosigned by the board approved supervisor the board may approve an extension of the period of temporary licensure.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin [~~the postdoctoral year or employment~~] to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision [~~postdoctoral year~~], the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of [~~agency~~] employment or supervision. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be notified by the board and directed to cease practice until the requirements are met or the necessary documentation has been submitted.

(3) Under no circumstances shall the grace period be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and is subject to all relevant laws and regulations.

Section 4. Incorporation by Reference. (1) "Form Psy 1", (January 2002 edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the application procedures to apply for a license as a psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the application procedures to apply for a license as a psychologist.

(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 amending the application procedures to apply for a license as a psychologist.

(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 amending the application procedures to apply for a license as a psychologist.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the application procedures to apply for a license as a psychologist to update the required supervisory experience mandated by statute.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the application procedures to apply for a license as a psychologist to update the required supervisory experience mandated by statute.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the application procedures to apply for a license as a psychologist to update the required supervisory experience mandated by statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the by amending the application procedures to apply for a license as a psychologist to update the required supervisory experience mandated by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 100 or fewer applicants for a credential from the board.

(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 credential from the board will have to obtain the updated, required supervisory experience mandated by statute.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since applicants for a credential from the board will have been working to obtain the updated, required supervisory experience mandated by statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants for a credential from the board will have the updated, required supervisory experience mandated by statute.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all applicants for a credential from the board.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(a) and (c)

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 Examiners of Psychology
(Amendment)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), 319.064(3), (4), 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. Except as provided in Section 15 of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change.

Section 2. (1) All supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 [~~Section 12~~] of this administrative regulation; and

(b) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon resumption of practice [~~renewal~~], the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on their [~~professional~~] activities and employment related to psychology during the period without supervision.

Section 4. (1) A licensed psychologist with health service provider designation who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 1(3). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall control, direct or limit the supervisee's practice as appropriate to insure that the supervisee's practice of psychology is competent.

(5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(3), (4), 319.064(2), (4), or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) [~~five (5)~~] years after the last date of supervision.

Section 6. (1) In calculating the amount of time spent in full-time practice while under supervision, 1,800 [~~2,000~~] hours of supervised practice shall be equivalent to one (1) year of experience [~~if the practice was obtained postlicensure~~].

(2) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:

Credential Status	Reporting Period	Report Due Date(s)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval) [~~Yearly~~]	Anniversary date of supervisee's licensure [~~January 15th~~]
(b) Licensed psychological associate or certified psychologist with fewer than 4 [~~or less~~] years of full-time practice, or its equivalent	Yearly [~~Every 2 years (with prior board approval)~~]	Anniversary date of supervisee's licensure [~~January 15th~~]
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to structured [~~oral~~] exam	
(d) Temporarily licensed [~~certified~~] psychological associate	Every 6 months	

(e) Sanctioned license [~~credential~~] holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

(a) A description of the frequency, format and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to one another.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all psychological assessments;

(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee [~~and submit~~] a supervisory plan that shall be submitted to the board to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign psychological assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish with the supervisee [~~and submit~~] a supervisory plan that shall be submitted to the board to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work on an as-needed basis;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board a apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure [~~certification~~].

(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted [~~submission of an approvable~~] plan.

(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may [~~shall~~] petition the board for further modification of the format, frequency, or duration of supervision, with a minimum amount of one (1) hour of face-to-face supervision per month. Additional modifications [~~Board approval of additional modification~~] of the format, frequency or duration of supervision may be submitted for approval by [~~reviewed upon request made to~~] the board.

(b) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 13. Supervision of a Disciplined Licensed [~~Credential~~] Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined licensed [~~credential~~] holder for the period of time defined by the board.

(2) The disciplined license holder [~~psychologist~~] shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings

of the disciplinary hearing;

(b) Meet with the disciplined license holder [~~psychologist~~] and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined license holder [~~psychologist~~] at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined license [~~credential~~] holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any [~~an~~] apparent violation of KRS 319.082(1) on the part of the disciplined license [~~credential~~] holder;

(g) Immediately report to the board in writing; a change in the ability to supervise, or in the ability of the disciplined license [~~credential~~] holder to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined license [~~credential~~] holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined license [~~credential~~] holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license [~~credential~~] holder; and

(m) Have knowledge of the disciplined license [~~credential~~] holder's physical and emotional well-being when it has direct bearing on the disciplined license [~~credential~~] holder's competence to practice.

(5) The supervisor shall control, direct or limit the disciplined license [~~credential~~] holder's practice as appropriate to ensure that the disciplined license [~~credential~~] holder's practice is competent.

(6) The supervisor shall contact the board liaison with any [~~a~~] concern or problem with the disciplined license [~~credential~~] holder, his or her practice or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined license [~~credential~~] holder and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined License [~~Credential~~] Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a [~~the~~] board member;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined license [~~credential~~] holder. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined license [~~credential~~] holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined license [~~credential~~] holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license [~~credential~~] holder and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined license [~~credential~~] holder shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report any [~~a~~] problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined license [~~credential~~] holder at the end of the term of supervision to summarize the supervision.

Section 15. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be supervised by a psychologist licensed by the Board of Examiner's of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program[~~,~~] who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees [~~and noncredential holders~~] to all clients and payors;

(4) Give to all clients and payors the name of the licensed psychologist responsible for their work;

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a license [~~credential~~] from the board.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for supervision for a psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for supervision as a psychologist.

(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 amending the requirements for supervision as a psychologist.

(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 amending the requirements for supervision as a psychologist.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for supervision as a psychologist, including the frequency of reporting requirements to the board and updating the applicable reporting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for supervision as a psychologist, including the frequency of reporting requirements to the board and updating the applicable reporting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for supervision as a psychologist, including the frequency of reporting requirements to the board and updating the applicable reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the by amending the requirements for supervision as a psychologist, including the frequency of reporting requirements to the Board and updating the applicable reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 100 or fewer applicants for a credential from the board as well as approximately 700 supervised psychologist as well as approximately 5 disciplined psychologists on an on-going, annual basis.

(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: Psychologists will have to update their policies and procedures to conform to the reporting requirements and content of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since reporting requirements and content of supervision are already mandated by administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, psychologists will have fewer reporting requirements and updated content of supervision previously mandated by administrative regulation.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the Board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes, this administrative regulation employs tiering to differentiate the credential held by the Board and the length of time of the supervisory relationship to lessen the reporting requirements to the board over time.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), 319.064(3), (4), 319.082(1), 319.092(3)(d), 319.118(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. 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 Examiners of Psychology
(Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational re-

quirements that meet the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each license [~~credential~~] holder shall document the completion of at least thirty (30) continuing education hours approved by the board within each three (3) year renewal period. Commencing on the first license renewal date after June 30, 2013, each license holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board within the three (3) year renewal period and for each subsequent renewal period.

(2) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license [~~credential~~] holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(3)[~~(2)~~] Continuing educational hours shall not carry over from one (1) renewal period to the next.

(4)[~~(3)~~](a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty (30) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at the time of license [~~credential~~] renewal. The license [~~credential~~] holder shall:

(1) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours, or

(2) Provide documentation through a board-approved registry which shall certify the name and license number of the license [~~credential~~] holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license [~~credential~~]. A license [~~credential~~] holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is offered or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers, or an affiliated state chapter;

(b) A recognized state, regional, national, or international psychological association; or

(c) A state or provincial psychology licensure board;

(2) The following programs shall be approved for continuing education:

(a) A course for graduate-level academic credit or a workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an affiliated hospital or medical center;

(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Behavioral [~~Mental~~] Health, Developmental and Intellectual Disabilities [~~and Mental Retardation Services~~];

(c) Interactional videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section.

(3)(a) The board may approve an organization that is not listed in Section 5(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval;

2. Pays an initial application fee of $250; and

3. Proposes to sponsor continuing education programs that meet [~~meets~~] the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 renewal fee annually.

(4)(a) The board may approve a specific continuing education program that is not listed in Section 5(2) of this administrative regulation if the sponsor of the program:

1. Files a written request for approval;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program which satisfies the requirements for license renewal shall meet the following criteria:

(1) The program shall be:

(a) Offered or sponsored by an organization which has been approved by the board; or

(b) A specific program approved by the board;

(2) The program shall:

(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) A presenter shall be a professional qualified in the defined content area;

(4) The program's time shall be clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Attendance shall be recorded by the program's sponsor;

(6) Documentation of completion shall be provided to the participant;

(7) A participant shall complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours on the following basis:

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation; and

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total [~~six (6)~~] continuing education hours

for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total [~~six (6)~~] continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total [~~six (6)~~] continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) [~~twelve (12)~~] continuing education hours through interactive videoconferencing participation.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for continuing education for a psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for continuing education as a psychologist.

(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 amending the requirements for continuing education as a psychologist.

(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 amending the requirements for continuing education as a psychologist.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for continuing education as a psychologist, including the number of continuing education hours necessary starting after June 30, 2013, and the number of hours allowed to be obtained other than in-person continuing education.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for continuing education as a psychologist, including the number of continuing education hours necessary starting after June 30, 2013, and the number of hours allowed to be obtained other than in-person continuing education.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for continuing education as a psychologist, including the number of continuing education hours necessary starting after June 30, 2013, and the number of hours allowed to be obtained other than in-person continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the by amending the requirements for continuing education as a psychologist, including the number of continuing education hours necessary starting after June 30, 2013, and the number of hours allowed to be obtained other than in-person continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 1,400 credential holders of the board.

(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: Psychologists will have to update continuing education compliance to conform to the amended requirements for continuing education required by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Moderate cost is expected since continuing education is already mandated by administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, psychologists will have to obtain more continuing education than previously mandated by administrative regulation, but may obtain more continuing education that is not in-person continuing education.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all psychologists, including the amended requirements effective after June 30, 2010.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(f)

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

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure as a psychologist by reciprocity.

Section 1. The board shall issue a license to an applicant who qualifies for a license as a psychologist pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure as a psychologist by reciprocity shall:

(1) Hold a current valid license in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board:

(a) That is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB); and

(b) With whom this board has an agreement of reciprocity;

(2) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(3) Has not been disciplined by any licensure board [~~Not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards~~].

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure with the health service provider designation does not have an additional 1,800 hours of supervised [~~a postdoctoral supervised year of~~] experience as required by KRS 319.050[~~(2)(c)~~], the board may determine that the applicant's practice experience is equivalent to the required year of experience.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the [~~Association of State and Provincial Psychology Boards~~] (ASPPB) or a successor organization or a person who holds a certificate from the National Register of Health Service Providers in Psychology or a successor organization and has a minimum equivalent of five (5) years of full-time practice at the independent level and has had no disciplinary action taken by a licensure board or on record in the ASPPB date base[~~, or who is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization~~] shall:

(1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation [~~with the exception of the requirements established in Section 3 of this administrative regulation~~]; and

(2) Upon meeting [~~Meet~~] the requirements established in Section 3 of this administrative regulation, shall be granted a license with the health service provider designation.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for granting licensure as a psychologist by reciprocity.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for granting licensure as a psychologist by reciprocity.

(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 granting licensure as a psychologist by reciprocity.

(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 amending the requirements for granting licensure as a psychologist by reciprocity.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for granting licensure as a psychologist by reciprocity to broaden the supervised experience and professional designations allowed for licensure by reciprocity as a psychologist.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for granting licensure as a psychologist by reciprocity.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for granting licensure as a psychologist by reciprocity.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the by amending the requirements for licensure by reciprocity as a psychologist.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 60 applicants for licensure by reciprocity as a psychologist.

(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 licensure by reciprocity will obtain broader supervised experience requirements and professional designations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Moderate cost is expected since supervised experience and professional designations are already required by administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, psychologists will have broader supervised experience and professional designations to comply as are already required by administrative regulation.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants for licensure by reciprocity as a psychologist.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(i)

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 Examiners of Psychology
(Amendment)

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state which does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:

(a) Is licensed in another state which does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology;

(b) Holds a current valid license or certificate, in good standing, to practice psychology which has been granted by:

1. At least one (1) state;

2. The District of Columbia; or

3. A Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB);

(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(d) has not been disciplined by any licensure board. [~~Does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.~~]

(2) The board shall consider whether the applicant meets the requirements established in KRS 319.050(2) [~~and 319.064(2)~~]. If an applicant for licensure does not have the [~~a postdoctoral~~] supervised [~~year of~~] experience as required by KRS 319.050(2)(d)[~~(c)~~], the board may determine that the applicant's practice experience is equivalent to the required supervised [~~year of~~] experience.

(3) An applicant for licensure as a psychologist shall:

(a) Submit to [~~an examination composed of~~] the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the ASPPB examination contractor; and

2. Owned by the ASPPB [~~Association of State and Provincial Psychology Boards~~]; and

(b) Obtain a [~~an ASPPB recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper and pencil form until April 1, 2002) or~~] computerized EPPP scaled score of 500 or greater. The board shall accept the applicant's previous examination results for the national EPPP [~~objective (EPPP)~~] examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(4) The board shall review the applicant's:

(a) Record as to complaints, or hearings held in previous jurisdictions; and

(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a structured [~~oral~~] examination on Kentucky mental health law.

Section 3. In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a psychologist shall submit to a structured oral examination on ethical principles and professional practice administered by two (2) licensed psychologists.

(1) [~~The examination shall cover ethical principles, professional practice, and Kentucky mental health law.~~

~~(2)~~] Each examiner shall independently rate the applicant's performance.

(2)[~~(3)~~] The applicant shall demonstrate an acceptable level of knowledge in each of the [~~three (3)~~] areas in order to pass the examination.

(3)[~~(4)~~] An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination and is eligible to be granted a license as a licensed psychologist.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for granting licensure as a psychologist to an applicant licensed in another state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for granting licensure as a psychologist to an applicant licensed in another state.

(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 amending the requirements for granting licensure as a psychologist to an applicant licensed in another state.

(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 amending the requirements for granting licensure as a psychologist to an applicant licensed in another 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 amendment will change the existing administrative regulation by amending the requirements for granting licensure as a psychologist to an applicant licensed in another state by requiring an examination by the board on Kentucky mental health law and by setting the applicable passing score on the required written examination.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for granting licensure as a psychologist to an applicant licensed in another state.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for granting licensure as a psychologist to an applicant licensed in another state.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the by amending the requirements for granting licensure as a psychologist to an applicant licensed in another state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 60 applicants for licensure as a psychologist who hold a license in another state.

(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 licensure who are licensed in another state will obtain the applicable passing score on the required examination and will obtain a passing score on an examination by the Board on Kentucky mental health law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since a passing score is already required by administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants for a license who are licensed in another state will have a defined passing score on the required examination as well as a passing score on an examination by the Board on Kentucky mental health law.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the Board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or

indirectly increase any fees.

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants for licensure as a psychologist who are licensed in another state.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(i)

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 Examiners of Psychology
(Amendment)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: Each credential issued by the board requires some type of supervised experience for the applicant. This administrative regulation establishes those requirements.

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist.

(1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed the equivalent of two (2) years of supervised professional experience acceptable to the board.

(2) One (1) year of the supervised professional experience shall be a predoctoral internship of 1,800 hours with at least 100 hours of supervisory sessions.

(3) The other 1,800 hours of supervised experience may be predoctoral, postdoctoral or a combination of pre- and postdoctoral supervised professional experience acceptable to the board.

(4) Supervised experience earned in the doctoral training program shall consist of practica, field placement or other professional experiences not including the beginning courses and accompanying practica in assessment and treatment techniques.

(5) At least fifty (50) percent of the supervised professional experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations.

(6) For the 1,800 hours of supervised experience earned in the doctoral training program, there shall be a minimum of 100 hours of supervisory sessions. At least seventy-five (75) percent of these supervisory sessions (75 hours) shall be done with a licensed psychologist supervisor, at least one-third (1/3) of which (25 hours) shall be conducted in an individual, face-to-face format. The other twenty-five (25) percent of the supervisory sessions ((twenty-five (25) hours) may be done with a licensed mental health professional. Of the total supervision hours, no more than fifty (50) percent (50 hours) may be done via secure interactive videoconferencing.

(7) If the supervised experience earned in the doctoral training program does not meet the 1,800 hour requirement, additional supervised professional experience satisfactory to the board may be earned with supervision by a board-approved licensed psychologist of a minimum of one (1) hour individual, face-to-face supervision on a weekly basis. [~~The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least 100 hours of supervisory sessions distributed over the year.~~

~~(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.~~

~~(3) Supervisors shall be licensed psychologists or doctoral-level psychologists approved by the board.~~]

Section 2. For a person applying for licensure as a psychologist to provide psychological health care services [~~with the health service provider designation,~~] the predoctoral internship [~~or first year of a two (2) year postdoctoral program~~] shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision;

(7) Training shall be postclerkship, postpracticum and postexternship level;

(8) The internship shall have a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity the of trainee's work and which is made available to prospective interns;

(9) The internship experience shall be completed within twenty-four (24) months;

(10) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of

the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Additional Required [~~Postdoctoral~~] Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience in addition to the internship [~~The one (1) year of postdoctoral experience~~] required by KRS 319.050(2)(d)[~~(c)~~] shall be a training-oriented professional experience that may include course-related field experience and practica, not to include the beginning courses and practica in assessment and treatment techniques.

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;

(c) Ethical dilemmas and issues; and

(d) Supervisory skill development.

(3) During the 1,800 hours of supervised professional [~~year of postdoctoral~~] experience in addition to the internship, the candidate shall:

(a) [~~Obtain and maintain a temporary license as a psychologist as required in KAR 201 26:155, Section 2;~~

~~(b)~~] Be under supervision as required by 201 KAR 26:171; and

(b) Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training program or with the practice setting:[~~(c) Be employed:~~]

1. In [~~By~~] a:

a. Health care facility or agency;

b. Regional mental health/mental retardation board;

c. School, college or university;

d. Government agency; [~~or~~]

e. Independent practice; or

(f)[~~.~~

~~(4) The postdoctoral year shall be served:~~

~~a.~~] In a formalized postdoctoral internship program. [~~in a health care facility; or~~

~~b. In an informal arrangement that meets the requirements of subsection (2) of this section.~~]

(4)[~~(5)~~] The applicant [~~candidate~~] and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section[~~, at the time of application for temporary licensure~~].

(5)[~~(6)~~] If the supervised professional [~~postdoctoral~~] experience in addition to the internship is in an independent practice, a special application letter shall affirm:

(a) The identity of the applicant [~~temporarily licensed psychologist~~], supervisor, and employer; and

(b) That the supervising licensed psychologist is not hired, employed or engaged under contract by the applicant [~~candidate~~] and shall not be terminated by the applicant [~~candidate~~];

(c) That the applicant [~~candidate~~] is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and

(d) That the applicant [~~candidate~~] has both administrative and clinical supervision which are provided by the independent practice or employer.

(6)[~~(7)~~] If the supervised [~~postdoctoral~~] experience is in a university setting, the application shall also:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection (2) of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and

2. Includes:

a. Supervising student clinical work;

b. Diagnostic and interviewing activity that occurs within clinical research projects; or

c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.

(7)[~~(8)~~] The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised [~~postdoctoral~~] experience as required by this section.

Section 4. A licensed psychologist applying for health service provider designation shall complete, in addition to the supervised professional experience requirement for licensure as a licensed psychologist, 1,800 hours of supervised experience within one (1) or more health care settings in which the psychologist delivered direct psychological health care services. Supervision shall be provided by a licensed psychologist approved by the board and shall consist of one (1) hour of individual supervision each week.

Section 5. An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours which shall meet the following criteria:

(1) The experience shall occur within an organized training program, and consist of a planned, programmed sequence of training experiences;

(2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Field experiences, practica, and internships shall provide training in a range of diagnostic [~~assessment~~] and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships.

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 6.[~~5.~~] An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171.

(1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1800 hours of supervised professional experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor which delineates roles and responsibilities, not restricting the ability of the school district to direct or control the activities of its employee;

(c) A person trained in school psychology, if employed by an

agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for requirements for supervised professional experience.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for requirements for supervised professional experience.

(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 amending the requirements for requirements for supervised professional experience.

(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 amending the requirements for supervised professional experience.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for supervised professional experience by allowing the two years of supervised professional experience to be granted in a variety of settings either before or after the granting of the doctoral degree.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for supervised professional experience.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for supervised professional experience.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the by amending the requirements for supervised professional experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 60 applicants per year for licensure as a psychologist.

(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 licensure will have to meet the amended requirements for supervised professional experience in a variety of settings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since supervised professional experience is already required by the current administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants for a license will be able to meet easier the amended requirements for supervised professional experience in a variety of settings.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants for licensure as a psychologist who must all obtain supervised professional experience.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032

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 Examiners of Psychology
(Amendment)

201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychologist.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: Certain terms are used in the statute regulating educational requirements for applicants for a credential. This administrative regulation defines those terms as they relate to licensed psychologists.

Section 1. A doctoral degree in psychology that is acceptable to the board shall be:
(1) A doctoral degree from a recognized institution of higher learning as defined in this administrative regulation;
(2) The program, wherever it may be administratively housed, is clearly identified by the granting institution as a psychology program. The program shall specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;
(3) Any dissertation required for the degree is psychological in method and content and an expected product of doctoral training in psychology;
(4) The program stands as a recognizable, coherent, organized entity within the institution;
(5) Within the psychology faculty there is clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
(6) The program is an integrated, organized sequence of study;
(7) There is an identifiable psychology faculty and a psychologist responsible for the program;
(8) The program has an identifiable body of students who are matriculated in that program for a degree; and
(9) In areas of training for psychologists who deliver or supervise psychological health services, [~~health service providers~~], the program includes educational experiences with titles such as practicum, internship or field training.

Section 2. (1) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:
(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.
(b) A minimum of one (1) full academic year shall be spent in residence at the institution In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:
1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.
2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, emotion.
3. Social bases of behavior, including the subject matters of social psychology, group process, organizational psychology, and systems.
4. Individual differences, including the subject matters of personality theory, human development, abnormal psychology.
(c) In addition to the core program, the curriculum shall include appropriate coursework as determined by the board in the specialty area of training. For candidates who seek to deliver or supervise psychological health services [~~health service provider designation~~], that training shall include specific training in diagnosis, psychological testing, and assessment of individual[~~/organizational~~] differences and the design and implementation of appropriate intervention techniques, e.g., psychotherapy, counseling, consultation, etc.
(2) The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this law.
(3) At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 4 (doctoral degree granting accreditation) or at Level 5 (graduate or professional degree granting accreditation).

THOMAS W. MILLER, Chair
APPROVED BY AGENCY: October 18, 2010
FILED WITH LRC: November 15, 2010 at 11 a..m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation amends the educational requirements for licensure as a licensed psychologist.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the educational requirements for licensure as a licensed psychologist.
(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 amending the educational requirements for licensure as a licensed psychologist.
(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 amending the educational requirements for licensure as a licensed psychologist.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the educational requirements for licensure

as a licensed psychologist by adding the requirement that an applicant earning a doctoral degree must spend at least one (1) year in residence at the institution granting the degree.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the educational requirements for licensure as a licensed psychologist.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the educational requirements for licensure as a licensed psychologist.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by amending the educational requirements for licensure as a licensed psychologist.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 60 applicants per year for licensure as a psychologist.

(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 licensure will have to meet the amended requirements for the educational requirements for licensure as a licensed psychologist by spending at least one (1) year in residence at the institution granting the degree.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since an accredited doctoral degree is already required by the current administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants for a license benefit by being able to meet the amended educational requirements for licensure as a licensed psychologist.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants for licensure as a psychologist who must hold a doctoral degree acceptable to the board.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032

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 Examiners of Psychology
(Amendment)

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015(8)

STATUTORY AUTHORITY: KRS 319.015(8), 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.015(8) authorizes a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years and requires the board to establish a registration process for nonresident psychologists. This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

Section 1. (1) A nonresident psychologist temporarily employed in the state may render psychological services for no more than thirty (30) days every two (2) years immediately upon notification of the board that the nonresident psychologist:

(a) Holds the Interjurisdictional Practice Certificate (IPC) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization; or

(b) Holds the Certificate of Professional Qualification (CPQ) issued by ASPPB or a successor organization; or

(c) Is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

(d) Is licensed in a jurisdiction with whom this Board has established reciprocity.

(2) A nonresident psychologist temporarily employed in the state may render psychological services no more than thirty (30) days every two (2) years with the approval of the board if the nonresident psychologist is duly licensed in a jurisdiction not established as having reciprocity with the board and holds none of the qualifications described in subsection (1) of this section.

Section 2. Pursuant to KRS 319.015(8), a nonresident licensee holder who seeks to practice temporarily in Kentucky shall file a written registration with the board. The registration shall be a written letter sent to the board:

(a) Indicating his or her desire to practice in Kentucky pursuant to KRS 319.015(8); and

(b) Stating the dates he or she intends to practice in Kentucky.

(2) Board approval shall be contingent upon:

(a) Receipt of documentation that the nonresident psychologist holds a valid license in good standing from another jurisdiction; and

(b) Confirmation that the applicant does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3)(a) Nonresident temporary practice pursuant to KRS 319.015(8) shall be conditionally approved by the chair of the board if:

1. The applicant for temporary practice meets the conditions for practice established by KRS 319.015(8); and

2. The applicant has registered with the board.

(b) The conditional approval shall terminate at the next regularly scheduled meeting of the board. At that meeting, the board shall determine whether to approve the temporary practice.

Section 3.[~~2.~~] Upon the completion of the authorized temporary employment [~~thirty (30) day~~] period, the nonresident license holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 4.[~~3.~~] For purposes of this administrative regulation, the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

Section 5.[~~4.~~] Pursuant to KRS 319.015(8), the provisions of this administrative regulation shall:

(1) Apply to a nonresident psychologist temporarily employed in the state for a period of fewer [~~less~~] than thirty (30) days every two (2) years; and

(2) Not be used to begin practice in Kentucky by an applicant for temporary or regular licensure pending credentials review.

Section 6.[~~5.~~] A person licensed to practice psychology in another jurisdiction may practice psychology by electronic or telephonic means in Kentucky if he or she registers with the board and receives board approval for this practice. A person seeking this approval shall follow the provisions set forth in Sections 1 through 4 of this administrative regulation.

Section 7.[~~6.~~] A person licensed to practice psychology in another jurisdiction and who is providing service in response to a declared disaster pursuant to an agreement between the American Red Cross and the American Psychological Association's Disaster Response Network may begin practice in Kentucky upon notification to the board.

Section 8.[~~7.~~] A person practicing pursuant to the provisions of KRS 319.015(8) shall be subject to the provisions of KRS 319.082 and 201 KAR 26:145.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for a nonresident psychologist to practice temporarily in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for a nonresident psychologist to practice temporarily in Kentucky.

(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 amending the requirements for a nonresident psychologist to practice temporarily in Kentucky.

(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 amending the requirements for a nonresident psychologist to practice temporarily in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending requirements for a nonresident psychologist to practice temporarily in Kentucky by broadening a variety of requirements necessary to be met to practice temporarily in Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for a nonresident psychologist to practice temporarily in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for a nonresident psychologist to practice temporarily in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the requirements for a nonresident psychologist to practice temporarily in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 20 nonresident psychologists 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: Nonresident psychologists who wish to practice temporarily in Kentucky will have to meet the broadened variety standards for a nonresident psychologist to practice psychology temporarily in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since a nonresident psychologist must already meet requirements to practice psychology temporarily in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, nonresident psychologists will have a broadened variety of standards to practice psychology temporarily in Kentucky for increased mobility and access to psychological services to Kentucky citizens.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in

fees or funding will not be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all nonresident psychologists who must meet the standards to practice temporarily in Kentucky.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.015(8), 319.032(1)(a).

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

201 KAR 26:230. Examinations.

RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064(1)(c) require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination requirements.

Section 1. (1) The national [~~written~~] examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) examination contractor and owned by the ASPPB [~~Association of State and Provincial Psychology Boards~~].

(a) The EPPP shall be taken by computer administration.

(b) The board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(2) The structured examinations shall cover Kentucky mental health law, [~~oral examination shall be structured to cover~~] ethical principles, and professional practice [~~and Kentucky mental health law~~].

Section 2. General Requirements. (1) An applicant for examination shall:

(a) Submit a completed application as required by 201 KAR 26:155, Section 1 or 26:280, Section 1; and

(b) Pay the applicable fee established in 201 KAR 26:160.

(2) The applicant shall sit for the national (EPPP) examination within one (1) year of the notice of the application being approved by the board. An applicant may sit for the national (EPPP) examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories and Canada, but shall register and apply for licensure in only one (1) jurisdiction.

(3) If an applicant loses eligibility to sit for the national (EPPP) examination because of failure to reschedule, cancel or appear to take the examination as stated in subsection (2) of this section:

(a) The applicant shall forfeit all fees paid; and

(b) Any temporary license issued to the applicant shall be terminated.

Section 3. Examination for Licensure as a Licensed Psychologist [~~with the Health Service Provider Designation~~]. (1) The applicant shall pass:

(a) The national (EPPP) [~~written~~] examination in accordance with subsection (2) of this section; and

(b) The structured examinations on Kentucky mental health law, ethical principles, and professional practice [~~oral examination in accordance with subsection (6) of this section~~].

(2) The applicant shall obtain an [~~a computerized~~] EPPP scaled score of 500 or greater or shall have obtained a previous national [~~an~~] EPPP passing score which satisfied the doctoral licensure requirement as to criterion level at the time of that examination [~~for licensure in effect at the time of test administration~~]. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(3) If an applicant for licensure as a licensed psychologist fails the national (EPPP) examination, the candidate shall reapply to the board, pay the appropriate fee to the ASPPB examination contractor [~~fees~~] and be deemed eligible by the board to be permitted to sit again for the national (EPPP) examination.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:

1. The national (EPPP) examination and structured examinations on Kentucky mental health law, ethical principles, and professional practice [~~written and oral examinations~~] are successfully completed; or

2. The temporary license is terminated.

(b) The applicant for licensure as a licensed psychologist [~~candidate~~] shall not be scheduled for the [~~oral~~] examination on Kentucky mental health law until the national [~~objective examination~~] (EPPP) examination has been successfully passed and the board has determined that the requirements for supervised experience for licensure as a licensed psychologist have been met. [~~required two (2) years of supervised experience have been approved by the board~~].

(4) In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists approved by the board. The structured oral examination shall not be required for an applicant who holds a Certificate of Professional Qualification in Psychology (CPQ) issued by the ASPPB or a successor organization or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization or holds a current license in good standing from a jurisdiction with a reciprocity agreement with this board.

(a) This structured oral examination shall cover ethical principles and[~~,~~] professional practice [~~and Kentucky Mental Health Law~~]. The applicant shall demonstrate an acceptable level of knowledge in each of the [~~three (3)~~] areas in order to pass the examination.

(b) Each examiner shall independently rate the applicant's performance.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the structured oral examination.

(5) If the applicant fails the first structured oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered a structured [~~an~~] oral examination by a second team composed in the same manner as the first team.

(b) If the second structured oral examination is failed, the applicant may reapply with a remediation plan approved by the board.

(c) Upon completion of the approved remediation plan, the applicant shall be administered a structured oral [~~an~~] examination by a team of the licensed psychologist members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed the structured oral examination on ethical principles and professional practice.

(6) If the applicant for licensure as a licensed psychologist fails to pass the structured oral examination, and wishes to apply to be credentialed as a licensed psychological associate, a completed application and the appropriate fee, as required by 201 KAR 26:160, shall be submitted [~~with the proposed area of competency and supervision indicated~~]. The board shall accept the applicant's previous examination results to satisfy the requirements as to criteria level [~~and area of competency~~].

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A national (EPPP) [~~written~~] examination unless the applicant's previous examination results for the national (EPPP) examination satisfied the doctoral licensure requirement as to criterion level at the time of that examination; or

(b) The applicant shall obtain a computerized national (EPPP) scaled score of 500 or greater. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit for the national [~~objective examination~~] (EPPP) examination shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

(3) If an applicant for licensure as a licensed psychological practitioner fails to obtain a scaled score of 500 or greater on the EPPP examination, the candidate may reapply to the board, pay the appropriate fee to the ASPPB examination contractor [~~fees~~] and be permitted to sit for the national (EPPP) examination again.

(4) The applicant for licensure as a licensed psychological practitioner [~~candidate~~] shall not be scheduled for the [~~oral~~] examination on Kentucky mental health law until the national [~~objective examination~~] (EPPP) examination has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner.

(a) This structured oral examination shall cover ethical principles and professional practice. The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination[~~, the applicant shall demonstrate an acceptable level of knowledge on the ethical principles, professional practice, and Kentucky mental health law~~].

(b) Each examiner shall independently rate the applicant's performance, using the same criteria as the structured oral examination for licensed psychologist candidates.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the structured oral examination.

(6) If the applicant fails the first structured oral examination, the applicant may reapply and shall be administered a structured [~~an~~] oral examination by a second team composed in the same manner as the first team.

(7) If the applicant fails the second oral examination, the applicant may reapply and shall be administered a structured [~~an~~] oral examination by a team of the licensed members of the board and appointed examiners as needed. A majority of the examining team shall rate the applicant as having passed the examination.

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall:

(a) Obtain a national (EPPP) [~~computerized EPPP~~] scaled score of 400 or greater; or

(b) Have obtained an EPPP passing score for licensure at the master's level in effect at the time of the applicant's previous national (EPPP) examination [~~test administration~~].

(c) The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.064(3), an applicant for licensure as a licensed psychological associate who has been approved to sit for the national (EPPP) examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license.

(3) If an applicant for licensure as a psychological associate fails the national (EPPP) examination, the applicant shall:

(a) File a remediation plan, cosigned by the supervisor within thirty (30) days of notice of failure; and

(b) Be eligible to retake the national (EPPP) examination upon approval of the plan by the board.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist.

(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 amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist.

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

trative regulation will assist in the effective administration of the statutes by amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist and recognizing other designations of credentials.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist and to recognize other designations of credentials.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist and recognizing other designations of credentials.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the requirements amends the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a psychologist.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 120 applicants for a license 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: Applicants will have to meet the broadened variety of standards for the structured examination necessary to practice psychology in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since an applicant must already meet requirements of an oral examination to practice psychology in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants will have met the broadened variety of standards for the structured examination necessary to practice psychology in Kentucky.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants for licensure as a psychologist who must pass the structured examination.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(a), 319.050, 319.053, 319.064.

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 Examiners of Psychology
(Amendment)

201 KAR 26:270. Change of license [~~credential~~] status.

RELATES TO: KRS 319.053, 319.056

STATUTORY AUTHORITY: KRS 319.032(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires the board to promulgate administrative regulations to enable persons licensed [~~credentialed~~] by this board to change their license [~~credential~~] status upon completion of additional training and experience. This administrative regulation establishes procedures to enable license [~~credential~~] holders to change their license [~~credential~~] status.

Section 1. Change of License [~~Credential~~] Status to Licensed Psychologist. (1) If a person holds a license [~~credential~~] as a certified psychologist with or without autonomous functioning, as a licensed psychological practitioner or as a licensed psychological associate and later completes the educational and supervised experience requirements to apply for licensed psychologist status, a new and complete application for licensure shall be submitted with an approved application fee as required by 201 KAR 26:155 and 26:160.

(2) The board shall accept the applicant's previous examination results for the national [~~objective~~] (EPPP) examination if the original test score satisfied [~~satisfies~~] the doctoral licensure requirement as to criterion level at the time of that examination.

(3) If the previous EPPP score does not satisfy the requirements of subsection (2) of this section, the applicant shall successfully complete the national (EPPP) [written portion of the] examination as described in 201 KAR 26:230.

(4) The structured examinations on Kentucky mental health law, ethical principles and professional practice [~~oral portions of the examination~~] shall be successfully completed by the applicant as

described in 201 KAR 26:230, Section 4(5).

Section 2. Change of License [~~Credential~~] Status to Licensed Psychological Practitioner by Certified Psychologists with Autonomous Functioning. (1) Persons holding a credential as a certified psychologist with autonomous functioning may continue to function with that title.

(2) Any certified psychologist with autonomous functioning may notify the board in writing of their choice to permanently change their title to "licensed psychological practitioner".

(3) The board shall then issue a new license with that title.

Section 3. Change of License [~~Credential~~] Status to Licensed Psychological Practitioner by Certified Psychologists and Psychological Associates. (1) If a person holds a credential as a certified psychologist without autonomous functioning or as a licensed psychological associate and later completes the educational and supervised experience requirements to apply for licensed psychological practitioner status, a new and complete application for licensure shall be submitted with an approved application fee as required by 201 KAR 26:155 and 201 KAR 26:160.

(2) The board shall accept the applicant's previous examination results for the national [~~objective~~] (EPPP) examination if the original test score satisfied [~~satisfies~~] the doctoral licensure requirement as to criterion level at the time of that examination.

(3) If the previous EPPP score does not satisfy the requirements of Section 1(2) of this administrative regulation, the applicant shall successfully complete the national (EPPP) [~~written portion of the~~] examination as described in 201 KAR 26:230, Section 4(5).

(4) The structured examinations on Kentucky mental health law, ethical principles, and professional practice [~~oral portions of the examination~~] shall be successfully completed by the applicant as described in 201 KAR 26:230.

Section 4. Change of License [~~Credential~~] Status to Licensed Psychological Associate by Certified Psychologists. (1) Persons holding a license [~~credential~~] as a certified psychologist may continue to function with that title.

(2) At the time of renewal of their license [~~credential~~], any certified psychologist may notify the board in writing of their choice to permanently change their title to "licensed psychological associate".

(3) The board shall then issue a new license with that title.

Section 5. Change of License [~~Credential~~] Status to Licensed Psychological Associate by Certified Psychological Associates. (1) Persons holding a license [~~credential~~] as a psychological associate shall use the title licensed psychological associate.

(2) The board shall issue a new license with that title.

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

(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 amending the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

(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 amending the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience by recognizing the structured examination on Kentucky mental health law, ethical principles and professional practice and designation of the required passing score on the written examination.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience by recognizing the structured examination on Kentucky mental health law, ethical principles and professional practice and designation of the required passing score on the written examination.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience by recognizing the structured examination on Kentucky mental health law, ethical principles and professional practice and designation of the required passing score on the written examination.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the requirements by amending the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience by recognizing the structured examination on Kentucky mental health law, ethical principles and professional practice and designation of the required passing score on the written examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 120 applicants for a license per year who wish to change their credential status with the board.

(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 meet the broadened variety of standards for the structured examination necessary to practice psychology in Kentucky as well as obtain a passing score on the required written examination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since an applicant must already meet requirements in order to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants will have met the broadened variety of standards for the structured examination and passing score necessary to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants to change their credential status upon completion of additional training and experience.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(c)

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 (+/-):

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amendment)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.053 requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for applicants.

Section 1. Application. (1) An application for a license [~~credential~~] as a licensed psychological practitioner may be submitted on form Psy 1, as incorporated in 201 KAR 26:155, after the requirements established in KRS 319.053(1) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons who are familiar with the clinical work of the applicant. One (1) letter shall be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board; and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of all requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the national [~~objective~~] (EPPP) examination as established in 201 KAR 26:230, Section 4.

(2) The board shall accept the applicant's previous examination results for the national [~~objective~~] (EPPP) examination if the original test score [~~scores~~] satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) The applicant shall pass the structured oral examinations on Kentucky mental health law, ethical principles, and professional practice [~~examination~~] established in 201 KAR 26:230, Section 4(5).

THOMAS W. MILLER, Chair

APPROVED BY AGENCY: October 18, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing

is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Brengelman, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to amend the requirements for a change in license status to enable persons licensed by the board to change their credential status upon completion of additional training and experience.

(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 amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

(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 amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to amend the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the requirements by amending the amending the requirements for the structured examination on Kentucky mental health law, ethical principles and professional practice required for licensure as a licensed psychological practitioner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 60 applicants for a license per year as a licensed psychological practitioner.

(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 meet the broadened variety of standards for the structured examination necessary to practice psychology in Kentucky as a licensed psychological practitioner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Minimal cost is expected since an applicant must already meet requirements in order to be licensed by the board as a licensed psychological practitioner.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants will have met the broadened variety of standards for the structured examination and passing score necessary to be licensed by the board as a licensed psychological practitioner.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies equally to all applicants for a license from the board as a licensed psychological practitioner.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1)(a) and (c).

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:

JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(Amendment)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080
STATUTORY AUTHORITY: KRS 439.340(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).
(2) "Chair" means the chairman of the board.
(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.
(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.
(5) "Evidence Based Program" means a program certified by the Kentucky Department of Corrections as having a positive impact on recidicvism when successfully completed by an offender.
(6)[~~(5)~~] "Parole" means the release of an inmate with a signed parole certificate to:
(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;
(b) Answer the detainer.
(7)[~~(6)~~] "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.
(8)[~~(7)~~] "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.
(9) "Parole for violent offender" is defined in KRS 439.3401.
(10)[~~(8)~~] "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.
(11)[~~(9)~~] "Physical injury" is defined in KRS 500.080(13).
(12)[~~(10)~~] "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.
(13)[~~(11)~~] "Reconsideration" means a decision to review a previous board action.
(14)[~~(12)~~] "Restitution" is defined in KRS 532.350(1)(a).
(15)[~~(13)~~] "Serious physical injury" is defined in KRS 500.080(15).
(16)[~~(14)~~] "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.
(17)[~~(15)~~] "SOTP" means Sex Offender Treatment Program.
(18)[~~(16)~~] "Youthful offender" is defined in KRS 600.020(63).

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:
(a) He has been denied entrance into the Sex Offender Treatment Program;
(b) He has been terminated from the SOTP; or
(c) He has successfully completed the SOTP.
(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).
(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.
(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review date. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:
(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2years	4 months
2 years, up to and including 39 years	20 % of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50 % of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:
1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1; or
2. Committed on or after July 15, 2002, which is:
a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chap-

ter 510;

b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

d. Robbery in the first degree; or

3. Committed on or after July 12, 2006, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree; or

4. committed on or after June 26, 2007, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree:

Sentences of a number of years	85 % of sentence received or twenty 20, whichever is less
Sentences of life	20 years

(f)[~~1. A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).~~

~~2. Except as provided by subparagraph 3 of this paragraph, the offender shall be released on parole if the offender:~~

~~a. Has completed the programs recommended by the Kentucky Department of Corrections;~~

~~b. Has not been found to have committed a disciplinary violation that is ranked as Category 3 and involves violence or that is ranked as Category 4 or higher, pursuant to Corrections Policy and Procedures 15.2 and 15.6, incorporated by reference in 501 KAR 6:020; and~~

~~c. Does not have an active detainer.~~

~~3. The offender shall not be released under subparagraph 2 of this paragraph if the offender:~~

~~a. Is a violent offender as defined in KRS 439.3401;~~

~~b. Is convicted of a sex crime listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; or~~

~~c. Is convicted of a crime in which the elements of the offense or the judgment of the Court demonstrate that in the commission of the crime:~~

~~(i) A weapon was used;~~

~~(ii) A human life was taken; or~~

~~(iii) A serious physical injury occurred.~~

~~(b) If convicted of a felony offense after December 3, 1980:~~

~~Sentence Being Served~~	~~Time Service Required Before First Review (Minus Jail Credit)~~
~~1 year, up to but not including 2 years~~	~~4 months~~
~~2 years, up to and including 39 years~~	~~20% of sentence received~~
~~More than 39 years, up to and including life~~	~~8 years~~
~~Persistent felony offender I in conjunction with a Class A, B, or C felony~~	~~10 years~~

~~(c) For a crime, committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:~~

~~Sentences of a number of years~~	~~85% of sentence received or 20 years, whichever is less~~
~~Sentences of life~~	~~20 years~~

~~(d) For a crime, committed on or after July 15, 2002, which is:~~

~~1. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;~~

~~2. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;~~

~~3. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or~~

~~4. Robbery in the first degree:~~

~~Sentences of a number of years~~	~~85% of sentence received or 20 years, whichever is less~~
~~Sentences of life~~	~~20 years~~

~~(e) For a crime, committed on or after July 12, 2006, which is:~~

~~1. A capital offense;~~

~~2. Class A felony;~~

~~3. Complicity to a Class A felony;~~

~~4. Class B felony involving the death of the victim or serious physical injury to a victim;~~

~~5. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;~~

~~6. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and KRS 531.310(2)(c);~~

~~7. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and KRS 531.320(2)(c);~~

~~8. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;~~

~~9. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;~~

~~10. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;~~

~~11. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or~~

12. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For a crime, committed on or after June 26, 2007, which is:

1. A capital offense;

2. Class A felony;

3. Complicity to a Class A felony;

4. Class B felony involving the death of the victim or serious physical injury to a victim;

5. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

6. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

7. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

8. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

9. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

10. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

11. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

12. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(g) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(h) If convicted of a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(i)] For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e)[(c)] of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c)[(b)] of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2)[(j)] Except as provided by paragraphs (a) and (b) of this subsection,[subparagraphs 1 and 2 of this paragraph,] after the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board.

(a)[1.] The maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence.

(b)[2.] The maximum deferment given at one time shall not exceed twenty-four (24) months for an offender convicted of a Class D or Class C felony except for:

1.[a.] A violent offender as defined in KRS 439.3401;

2.[b.] An offender convicted of a sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; and

3.[c.] An offender who has ever been convicted of a crime in which the elements of the offense or the judgment of the court demonstrate that in the commission of the crime:

a.[(i)] A human life was taken;

b.[(ii)] A serious physical injury occurred; or

c.[(iii)] A sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320 was committed.

(c)[3.] The board, at the initial or a subsequent review, may order a serve-out on a sentence, except as provided by Section 3(1)(b)2 of this administrative regulation. If the sentence is a life sentence, the full board shall vote.

(3) Parole review with new felony conviction.

(a)[(k)1.a. Except as provided by clause b of this subparagraph,] If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b)1.[b. If the sentence received for the latter conviction requires the prisoner to serve a fixed percentage of the sentence or a fixed number of years prior to becoming eligible for parole, parole eligibility shall be determined by the latter conviction only.

2.a.] If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2.[b.] If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c)[3.] If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1.[a.] The recommendation of parole shall automatically be voided; and

2.[b.] The new parole eligibility date shall be calculated from the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape.[(l)] If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a)[1.] Except as provided by paragraph (b) of this subsection,[subparagraph 2 of this paragraph,] in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1.[a.] The amount of time to be served for parole eligibility on the original sentence;

2.[b.] If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3.[c.] If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and

4.[d.] If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b)[2.] If the board has previously set a parole eligibility date for

an inmate described in subparagraph 1 of this paragraph, and that date is later than that calculated under subparagraph 1 of this paragraph, the later date shall be the parole eligibility date.

(c)1.[~~(m)1.~~] Except as provided by paragraph (b) of this subsection[~~ subparagraph 2 of this paragraph~~], if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that determined by the calculations.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d)[~~(n)~~] If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be calculated from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e)[~~(o)~~] If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation.[~~(p)~~] If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a)[~~(q)~~] If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b)[~~(r)~~] If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

(6) Parole hearing procedures.

(a)[~~(2) The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear:~~]

1.[~~(a)~~] the board may appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members; and

2.[~~(b)~~] A majority vote by a quorum shall be required before action is taken.

(b)[~~(3)~~] If an inmate refuses to meet the board on his scheduled hearing date, a statement to that effect signed by the inmate and the prerelease or re-entry coordinator[~~institutional parole officer~~] shall be presented to the board. A person refusing to meet the board may petition the board for reconsideration.

(c)[~~(4)~~] An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(d)[~~(5)~~] The board shall schedule the initial parole hearing as follows:

1.[~~(a)~~] For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

2.[~~(b)~~] For an institution that has hearings scheduled bimonthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole consideration.

3.[~~(c)~~] If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed except for inmates confined in county jails as provided by KRS 439.310(4).

Section 4. Board Criteria for Recommending or Denying Parole. (1) Before recommending or denying parole, the board shall apply one (1) or more of the following factors to an inmate:

(a) Current offense - seriousness, violence involved, firearm used, life taken or death occurred during commission;

(b) Prior record - prior felony convictions, prior misdemeanor convictions, history of violence, prior contact with law enforcement or criminal courts where conviction did not occur;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement, particularly evidence-based program involvement;

(d) Attitude toward authority - before and during incarceration;

(e) History of Substance Abuse[~~History of alcohol or drug involvement~~];

(f) History of prior probation, pre-trial, shock probation or parole violations;

(g) Educational history[~~Education and job skills~~];

(h) Employment history and job skills;

(i) Emotional stability;

(j) Mental status - capacity and stability;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting an inmate back in the county of conviction;

(n) Victim impact statement and victim impact hearing;

(o) Review of parole plan[~~housing, employment, need for community treatment and follow-up resources~~]; and

(p) Other factors involved that relate to public safety or the inmate's needs.

(2) If the board makes a parole recommendation:

(a) It may rescind the recommendation at any time prior to the release of an inmate on parole; and

(b) Parole shall not become effective until the home placements are approved, the parole certificate is signed, and the inmate leaves the institution.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision, the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out, or his authorized legal representative, may request reconsideration[~~an appellate review~~] by the board. A request for the review shall be in writing and shall be postmarked no later than twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not postmarked within twenty-one (21) days, it shall be denied. The request shall be screened by the board chairperson[~~a board member~~] or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is an allegation of misconduct by a board member that is substantiated by the record;

(b) If there is a significant procedural error by a board member; or

(c) If there is significant new evidence that was not available when the hearing was conducted. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(5) A request for reconsideration[~~appellate review~~] shall be based on one (1) or more of the reasons established in subsection (4) of this section. A request based on an allegation of misconduct

or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of a quorum of the board. This decision shall be final.

Section 5. Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Department of Juvenile Justice and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Department of Juvenile Justice shall have a hearing at a site agreed upon by that department and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Department of Juvenile Justice and the board or the central office of the board.[~~(8) Special hearings for a youthful offender shall be held in central office.~~]

Section 6. Conditions of Parole. (1) The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit a report in writing once a month, or more if directed by the officer;

(b) Permit his parole officer to visit his home and place of employment at any time;

(c) Not indulge in the use of a nonprescribed controlled substance or alcohol;

(d) When directed to do so by the parole officer, submit to random tests of blood, breath, saliva, or urine to determine the existence of any illegal substances in his system;

(e) Work regularly and support his legal dependents; if unemployed, he shall report this fact to his officer and make every attempt to obtain other employment;

(f) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational, or treatment;

(g) Not visit with an inmate of a penal institution without permission of his parole officer;

(h) Not leave the state, district, residence, or change employment[~~place of employment~~] without written permission of his parole officer;

(i) Not be permitted to purchase, own, or have in his possession a firearm or other weapon;

(j) Not violate any law or city ordinance of this state, any other state or the United States;

(k) Not falsify any report to his parole officer;

(l) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison pursuant to KRS 119.025;

(m) Comply with 501 KAR 1:030 through 1:050 and special instructions of his parole officer;

(n) Pay a supervision fee unless expressly waived by the board;

(o) Pay the balance of the restitution ordered pursuant to KRS 439.563; and

(p) Pay the balance of the sum payable to the Crime Victims Compensation Fund pursuant to KRS 346.185.

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to observe any condition the board has determined is necessary for the safety of the public or rehabilitation of the parolee.

The Chairman of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board, hereby approves the promulgation of the regulation on behalf of the Kentucky Parole Board, as indicated by his signature below.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010 at 9a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. 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: John C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Cummings (502) 564-3620

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for determining parole eligibility.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.320, 439.340.

(c) How this administrative regulation conforms to the content of the authorizing statues: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Kentucky Parole Board employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies and updates the Kentucky Parole Board's regulations governing parole eligibility.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 439.320, 439.340.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations governing parole eligibility. The amendment clarifies and updates the Kentucky Parole Board's regulations governing parole eligibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies and updates the Kentucky Parole Board's regulations governing parole eligibility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Parole Board members, the Board's staff, offenders eligible for parole or on parole, and members of the public that are victims of crime or that are affected by crime.

(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: Parole Board members, staff, and offenders will have to follow the changes made in policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the Kentucky Parole Board.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Parole Board budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted Funds

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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 administrative regulation and the amendments to it will impact the operation of the Kentucky Parole Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320(8), 439.340(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation do not increase costs from what was previously budgeted to the Kentucky Parole Board.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation are not expected to increase costs from what will be budgeted to the Kentucky Parole Board.

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

JUSTICE AND PUBLIC SAFETY CABINET

502 KAR 12:010. Sexual assault forensic-medical examination protocol.

RELATES TO: KRS 72.020, 209.020(4), 209.030, 209A.020(4), 209A.030, 211.600, 216B.015, 216B.400, 216B.990(3), 314.011(14), 346, 421.570, 510.010-510.140, 524.140, 530.020, 530.064(1)(a), 531.310, 600.020, 620.030, 42 U.S.C. 3796gg-4, 45 C.F.R. 164.512

STATUTORY AUTHORITY: KRS [15A.160,] 216B.400[(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 216B.400(2) authorize the cabinet to promulgate administrative regulations developing a statewide medical protocol for sexual assault examinations. This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Section 1. Definitions. (1) "Basic treatment" means basic medical care provided to victims of sexual offenses including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of postexposure HIV prophylaxis.

(2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement.

(3) "Examination Facility" means a sexual assault examination facility as defined in KRS 216B.015(26).

(4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.

(5) ["Facility" means a hospital emergency room, or any facility established for the purpose of providing medical care and collecting forensic evidence for victims of sexual assault.

(2)] "Rape crisis center advocate" means a victim advocate who:

(a) Has met the requirements of KRS 421.570; and

(b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 920 KAR 2:010 [210.410, 210.450, and 908 KAR 2:070].

(6)[(3)] "Victim" means a person who may have [reports or has] suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:

(a) A sexual offense, pursuant to KRS 510.010 to 510.140 [Chapter 510];

(b) Incest, pursuant to KRS 530.020; or

(c) [An assault or related offense, pursuant to KRS Chapter 508;

(d)] An offense relating to:

1. The use of a minor in a sexual performance, pursuant to KRS 531.310; or

2. [Promoting a sexual performance by a minor, pursuant to KRS 531.320; or

3.] An unlawful transaction with a minor, pursuant to KRS 530.064(1)(a)[, 530.065, or 530.070; or

(e) An offense that endangered the welfare of an incompetent person, pursuant to KRS 530.080].

Section 2. Preforensic-Medical Examination Procedure. If a person seeking treatment as a victim arrives at an examination facility, [When a victim reporting one (1) of the designated offenses described in Section 1 of this administrative regulation arrives at a health facility, the following process shall be completed and documented by] the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following:

(1) Reporting to the Rape Crisis Center Advocate. (a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and

(b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation;

(2) Limited Mandatory Reporting to the Cabinet for Health and Family Services. (a) If the victim is less than eighteen (18) years old:

1. Assess whether the victim may be an abused, neglected, or dependent child, as defined in KRS 600.020. In cases of suspected child abuse, neglect, or dependency, medical personnel shall immediately report the incident to the Cabinet for Health and Family Services; a local or state law enforcement agency; or the Commonwealth's attorney or county attorney in accordance with KRS 620.030; and

2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child; and

(b) If the victim is eighteen (18) years old or older:

1. The examination facility shall not contact law enforcement or release any information to law enforcement without the victim's authorization;

2. Determine whether a mandatory reporting law addressing spouse abuse or abuse of a vulnerable adult applies:

a. Assess whether the victim may be an adult as defined in KRS 209A.020(4); and

b. Assess whether the victim may be an adult as defined in KRS 209.020(4); and

3. If subparagraph 2.a or 2.b of this paragraph applies, immediately report the incident to the Cabinet for Health and Family Services and notify the victim of the report;

(3) Optional Reporting to Law Enforcement.

(a) Ask the victim whether she or he wants to report the incident to law enforcement;

(b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and

(c) If the victim chooses not to report to law enforcement, neither information nor samples shall be released to law enforcement, unless the victim has specifically authorized the release of information or samples;

(4) [~~Contact the rape crisis center to inform the on call advocate that a victim has arrived at the health facility for an examination;~~

~~(2) Ask if the victim wishes to have a rape crisis center advocate present for the examination.~~

~~(3)~~] Inform the victim that all statements made during the interview[~~,~~] and the sample [~~evidence~~] collection process[~~,~~] to physicians, nurses, other hospital personnel, law enforcement officers [~~or to rape crisis center~~] advocates are not privileged and may be disclosed;

(5)[~~(4)~~] Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination [~~exam~~] and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;

(6)[~~(5)~~] Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;

(7)[~~(6)~~] Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred;

(8)[~~(7)~~] Inform the victim that consent for the forensic sample [~~evidence~~] collection process may be withdrawn at any time during the examination;

(9)[~~(8)~~] Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV [~~diseases~~], pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;

(10)[~~(9)~~] Obtain documented consent from the victim prior to conducting the forensic-medical [~~rape~~] examination; and

(11) Document that the procedures established in this section are completed.

Section 3. The Forensic-Medical Examination. (1) A physical examination may be conducted for basic treatment and to collect samples [~~the collection of evidence~~] in all cases of sexual assault, regardless of the length of time that [~~which~~] may have elapsed between the time of the assault and the examination itself.[~~;~~]

(2) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used. This kit consists of:

(a) Instructions;

(b) Evidence envelope;

(c) Comb; and

(d) Swabs.[~~;~~]

(3) Personnel in attendance during the forensic examination shall be limited to the following persons:

(a) Examining physician, [~~or~~] sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;

(b) Attending nurse and additional nursing personnel;

(c) Rape crisis center advocate; and

(d) Other persons who are:

1. Dictated by the health needs of the victim; or

2. Requested by the victim.[~~;~~]

(4) Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination [~~health~~] facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.[~~;~~]

(5) The following types of samples [~~evidence~~] may be collected during the examination:

(a) Hairs from the head or pubic region;

(b) Fingernail cuttings, swabs, or scrapings;

(c) Clothing fibers, or other trace evidence;

(d) Bodily fluids, including:

1. Semen;

2. Blood; [~~and~~]

3. Sweat; and

4. Saliva;

(e) Clothing; and

(f) Other samples that may be presented as evidence [~~that could be presented~~] at a trial.[~~;~~]

(6) Samples [~~Evidence~~] shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.[~~;~~]

(7) The collection of samples [~~evidence~~] shall cease immediately if the victim dies during the process.

(8) The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination and the samples [~~collection of evidence~~] process and the evidence collected up to that time shall be delivered to the coroner or the coroner's designee. Collection of samples may be completed by medical personnel if requested by the coroner. [~~of the coroner;~~]

(9) The coroner shall be notified in accordance with KRS 72.020 and samples [~~the law and evidence~~] shall not be collected if the victim is deceased upon arrival at the examination facility.

Section 4. Postforensic Examination Procedures. At the conclusion of the forensic-medical examination the appropriate personnel at the examination [~~health~~] facility shall provide the victim with:

(1) Information regarding follow-up procedures and appointments concerning:

(a) Sexually transmitted infections, including HIV [~~diseases~~];

(b) Pregnancy;

(c) Urinary tract or other infections; and

(d) Similar assault related health conditions;

(2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;

(3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;

(4) A garment or other appropriate clothing to wear in leaving the hospital, or [~~provide~~] assistance in obtaining other personal clothing;

(5) Information about:

(a) The Crime Victim's Compensation Board, as established [~~addressed~~] in KRS Chapter 346; and

(b) The following administrative regulations providing aid to a

crime victim:

1. 107 KAR 1:005;
2. 107 KAR 1:010;
3. 107 KAR 1:015;
4. 107 KAR 1:025; [~~and~~]
5. 107 KAR 1:040; and

(6) If the victim chooses not to report to law enforcement, information about:

(a) Length of time samples will be stored;

(b) Whom the victim may contact to file a report or authorize the release of samples; and

(c) Whether the samples will be automatically destroyed or transferred for extended storage if the victim does not request release of samples to law enforcement within the specified period.

Section 5. Storage and Transfer of Samples. (1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.

(2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.

(3) The following information shall be maintained for each sample stored:

(a) Patient identifier;

(b) Date collected;

(c) Description of sample;

(d) Signature of the collecting medical professional;

(e) Date and time entered into storage and signature of person receiving; and

(f) Date and time removed from storage, signature of person removing, and purpose of removal.

(4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the examination facility shall transfer samples to local law enforcement officials as soon as possible.

(5) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least ninety (90) days.

(6) The examination facility may either store samples or transfer samples to a designated storage facility.

(7) The examination facility shall maintain documentation regarding transfers of samples.

(8) Facilities or agencies providing secure storage of samples under this section shall assure compliance with subsections (5) and (6) of this Section within a locked or otherwise secure container in a limited-access location.

(9) Storage agreements:

(a) May be long-term or case specific; and

(b) Shall designate sending and receiving facilities and certify compliance with Sections 1 through 9 of this administrative regulation.

(10) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency except if:

(a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility;

(b) The victim later chooses to file a delayed report; or

(c) Pursuant to court order.

Section 6. Removal of Samples from Secure Storage. Samples shall not be permanently removed from storage except if:

(1) The victim authorizes release of samples to a law enforcement agency or other entity;

(2) The time frame for storage has lapsed, as established by Section 5(5) of this administrative regulation;

(3) The victim authorizes the destruction of the samples; or

(4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples. (1) Ninety (90) days after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with the facility's policy.

(2) Destruction shall be conducted using biohazard precautions.

(3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.

(4) Samples may be destroyed upon the request of a victim. The victim's request for destruction shall be documented by the examination facility and designated storage facility, if used.

This administration regulation was drafted in consultation with the Sexual Assault Response Team (SART) Advisory Committee pursuant to KRS 216B.400(2)(4)(10)(b)(1).

J.MICHAEL BROWN, Secretary
E. A. RECKTENWALD, Executive Director
MAJOR LYNN CROSS, East Troop Commander

APPROVED BY AGENCY: November 10, 2010

FILED WITH LRC: November 10, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 22nd day of December, 2010 at 9 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 15th of December, 2010, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 15th of December, 2010. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 3rd day of January, 2011. 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: Emily M. Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6391, email Emilym.perkins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the protocol for Sexual Assault Medical-Forensic Examinations (SAFE Exams).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 216B.400.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the performance of SAFE Exams, including defining the terms in KRS 216B.400; standards for storing collected samples; and guidelines for mandatory reporting if abuse of a child, spouse, or vulnerable adult is known or suspected.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to medical personnel regarding their duties and responsibilities and informs citizens who have been sexually assaulted of their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment brings Kentucky's protocol for SAFE Exams into compliance with the with KRS 216B.400 as amended by the 2010 Kentucky General Assembly, Regular Session), as well as 42 U.S.C. 3796gg-4 (Violence Against Women Act or VAWA) and 45 C.F.R. 164.512 (Health Insurance Portability and Accountability Act or HIPAA), and updates practices to reflect current best practices and requirements of state and federal law.

(b) The necessity of the amendment to this administrative regulation: To conform with KRS 216B.400 as amended by the 2010 Kentucky General Assembly, Regular Session, as well as the VAWA and HIPAA. Compliance with VAWA is necessary to ensure that Kentucky continues to receive its annual award of federal funding authorized by the Violence Against Women Act. The awarded funding for 2010 is approximately $2 million per year.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.400(4) directs the Secretary of Justice and Public Safety Cabinet to promulgate a statewide medical forensic protocol in consultation with the Sexual Assault Response Team Advisory Committee. This proposed amendment was developed through extensive consultation with the Sexual Assault Response Team Advisory Committee. It provides a statewide medical forensic protocol that complies with current state and federal laws and best practices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides health care providers, allied professionals, and citizens with information concerning the current procedures for the performance of SAFE Exams.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects hospitals that provide emergency services (125), other sexual assault examination facilities (15), and the numerous physicians and Sexual Assault Nurse Examiners who provide SAFE Exams. It also affects approximately 1,100 individuals per year who are sexually assaulted and are provided SAFE Exams.

(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: Hospitals and other sexual assault examination facilities must update protocols and establish secure storage locations to ensure the chain of custody of collected samples. Doctors and Sexual Assault Nurse Examiners will be required to modify practices accordingly. Federally funded resources and training (described below) will assist regulated entities with compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hospitals and other sexual assault examination facilities may incur minimal costs (less than $250) to establish secure storage locations. Because doctors and Sexual Assault Nurse Examiners are paid for any SAFE Exams performed, they should experience no cost. Likewise since KRS 216B.400 dictates that the victims should not be billed, no related costs should be incurred by individuals who are examined.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals, other sexual assault nurse examiners, doctors, and Sexual Assault Nurse Examiners will benefit from greater clarity regarding requirements and expectations. Victims will benefit greatly from the opportunity to have greater control in decisions related to health care, which promotes healing following sexual violence.

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

(a) Initially: $31,250 or less.

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Fortunately, most hospitals already have appropriate storage facilities onsite. Therefore, most hospitals will only need to develop policies and procedures to ensure that these facilities are appropriately utilized to comply with this regulation. Federal grant funds have been secured to assist hospitals with policy and procedure development in order to promote consistent and timely implementation. A federal Violence Against Women Act - ARRA grant in the amount of $114,700 is being used to develop samples policies and provide training hospitals and health care providers throughout the Commonwealth. The grant will also support ongoing technical assistance on related issues.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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, Crime Victims Compensation Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.400, 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
Division of Motor Carriers
(Amendment)

601 KAR 1:101. Proof of liability and cargo insurance.

RELATES TO: KRS [~~281.600,~~] 281.655, 281.656, 49 C.F.R. 367, 387[~~281.670, 281.990, 49 C.F.R. Parts 387, 1023, 1043~~]

STATUTORY AUTHORITY: KRS 281.655(1)[~~KRS 281.600, 49 C.F.R. Parts 387, 1023, 1043~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.655(1) authorizes the cabinet to promulgate administrative regulations requiring[~~that before any certificate or permit will be issued or renewed,~~] the applicant or holder of a certificate or permit to file or have on file[~~shall file~~] with the cabinet[~~department~~] an approved indemnifying bond or insurance policy. This administrative regulation establishes a system of insurance filings for all motor carriers operating in intrastate commerce or[~~which have been~~] registered in Kentucky pursuant to the provisions of 49 C.F.R. Part 367[~~49 C.F.R. Part 1023~~].

Section 1. Proof of Insurance of Interstate Exempt and Intrastate Motor Carriers. (1)(a) A motor carrier operating in intrastate for-hire commerce shall file a certificate of insurance with the cabinet as proof of insurance required by KRS 281.655(1).

(b)[~~Evidence of insurance required by KRS 281.655(1) shall be filed for motor carriers operating in intrastate commerce and those~~

~~operating in interstate commerce but which are exempt from the authority of the Interstate Commerce Commission with the Division of Motor Carriers in the form of a certificate of insurance~~].the certificate of insurance shall be written to show the term of the policy to be continuous until cancelled [~~under proper notice. Another form of evidence of insurance shall not be accepted~~.]

(2) A[~~The~~] certificate of bodily injury and property damage insurance shall be filed on Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, Form E, TC 95-211 [~~form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" revised April, 1988~~].

(3) All motor carriers of household goods[~~household goods motor carriers~~] shall file proof of cargo insurance on Uniform Motor Carrier Cargo Certificate of Insurance, Form H, TC 95-212[~~form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance" revised April, 1988~~].

(4) A policy of insurance shall be cancelled by[~~(a)Cancellation of insurance required to be filed pursuant to KRS 281.655(9) shall be effected through~~] the filing of Uniform Notice of Cancellation of Motor Carrier Insurance Policies, Form K, TC 95-213[~~form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" revised April, 1988~~.

~~(b) Notice of the reinstatement of insurance which was cancelled pursuant to subparagraph (a) of this subsection shall be as set forth in subsections (2) and (3) of this section.~~]

Section 2. Insurance - Interstate Authorized Carriers. (1) The minimum amounts of liability insurance for a motor carrier of property or passengers authorized by the Interstate Commerce Commission shall be governed by 49 C.F.R. 387.9[~~Provisions of Title 49, Code of Federal Regulations, Part 387 as effective January 11, 1995 and 49 C.F.R. Part 1043.2 as effective November 13, 1990, shall govern the minimum amounts of liability insurance of a motor carrier of property or passengers authorized to do so by the Interstate Commerce Commission.~~

~~(2) In accordance with 49 C.F.R. Part 1023, Interstate Commerce Commission authorized motor carriers registered in Kentucky pursuant to 601 KAR 1:040, Section 5 shall file proof of insurance with the Division of Motor Carriers on Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982, or if more than one (1) insurance carrier is involved, Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982. These forms are incorporated by reference.~~]

Section 3. Reinstatement of Insurance. A motor carrier desiring to file a reinstatement of insurance that[~~which~~] has been cancelled shall file a new certificate of insurance as established in[~~required by~~] this administrative regulation.

Section 4. Self-insurers. (1) An applicant for an exemption as established in KRS 281.655(11)[~~Persons applying in accordance with KRS 281.655(11) for an exemption in whole or in part, from the requirements of KRS 281.655(1), (5) and (6)~~] shall file with the cabinet: (a) An application in petition form;[~~their application in petition form accompanied by~~]

(b) A balance sheet that reflects the financial condition of the applicant for the last calendar quarter preceding the date of the application prepared by a Certified Public Accountant or an accounting official of the applicant; and

(c) An income statement[~~,~~] for the last calendar quarter preceding the date of the application prepared by a Certified Public Accountant or an accounting official of the applicant.

(2)[~~as exhibits, which shall be prepared by a Certified Public Accountant or a responsible accounting officer of the applicant and shall reflect the actual financial condition of the applicant as of the last calendar quarter preceding the date of the application. When~~] An authorized interstate carrier that has received an order from the Interstate Commerce Commission qualifying the carrier as self insured [~~operating exclusively in interstate commerce has qualified as a self-insurer with the Interstate Commerce Commission, and that commission has entered an order allowing the carrier to qualify as a self-insurer, the applicant~~] may file[~~,~~] as an exhibit[~~,~~] a certified copy of the [~~ICC~~] order with its application in lieu of a balance sheet and [~~an~~] income statement required in subsection one (1) of this section.

(3) Based on the financial documents presented by the applicant, the cabinet shall enter an order granting or denying the exemption order[~~The cabinet shall, in its discretion, enter an order consistent with its opinion of the applicant's financial condition~~].

(4) The cabinet may request additional documents from the applicant:

(a) In order to further clarify the financial condition of the applicant; or

(b) If an order has been granted by the cabinet and there is reason to believe the financial condition of the applicant has changed.

(5) The cabinet shall revoke the exemption order if the financial condition of the applicant has deteriorated since the order was entered by the cabinet [~~(4) The order may be revoked by the cabinet at any time when it has reason to believe that the financial condition of the applicant has changed.~~

~~(5) The cabinet may also require the filing of additional financial statements or at any time it has reason to believe the financial condition of the applicant has changed.~~]

Section 5. Incorporation by Reference.[~~Material Incorporated by Reference.~~] (1) The following material is incorporated by reference:

(a) "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance", Form E, TC 95-211 [~~Form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance"~~], revised April 1988;

(b) "Uniform Motor Carrier Cargo Certificate of Insurance", Form H, TC 95-212 [~~Form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance"~~], revised April 1988;

(c) "Uniform Notice of Cancellation of Motor Carrier Insurance Policies", Form K, TC 95-213 [~~Form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies"~~], revised April 1988[~~;~~]

(d) Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance", revised January 1982, Interstate Commerce Commission; and

(e) Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance", revised January 1982, Interstate Commerce Commission].

(2) This material may be inspected, copied, or obtained at the Department of Vehicle Regulation, Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street[~~Third Floor, State Office Building, 501 High Street~~], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [~~The telephone number is (502) 564-4540.~~]

THOMAS O. ZAWACKI, Commissioner
MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: October 18, 2010

FILED WITH LRC: October 20, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 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 the close of business January 3, 2011. 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 administrative regulation establishes a system for all intrastate or interstate motor carriers operating in Kentucky to file indemnity bonds or insurance policies with the cabinet.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedures for motor carriers to follow in filing an approved certificate of insurance with the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation will insure that motor carriers operating in intrastate or interstate commerce in Kentucky will be aware of the procedures to follow in filing a bond or insurance policy as established in KRS 281.655.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The updates to language and forms will insure that motor carriers operating in intrastate or interstate commerce have the latest information assisting in more effective administration of the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update procedures, requirements, and forms. This amendment is an update to an existing administrative regulation that has not been amended since 1996 and before revisions were made to the cited federal law. These amendments reflect that 49 C.F.R. Parts 1023 and 1043 have now been revised to new section numbers. Accordingly, federal forms have been changed. This amended regulation updates all forms associated with the process of filing or cancelling proof of insurance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to upgrade the changes in law and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment upgrades language and procedures but follows the structure provided by KRS 281.655.

(d) How the amendment will assist in the effective administration of the statutes: Intrastate and interstate motor carriers will know the most current procedures and forms for obtaining required bonds and insurance policies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All motor carriers operating in Kentucky in intrastate commerce, and all of the motor carriers based in Kentucky but operating under the authority of the Interstate Commerce Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require motor carriers to take any new or different actions to file proof of insurance with the cabinet.

(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 fees involved with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current forms and procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(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: There are no costs associated with implementation and enforcement of this regulation.

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

(9) TIERING: Is tiering applied? Yes. There are differing levels of liability and cargo insurance required for different size vehicles.

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

1. 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 Division of Motor Carriers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 281.655.

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 based on these amendments.

(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 AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(Amendment)

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training.

RELATES TO: KRS 151B.280(3), 341.190

STATUTORY AUTHORITY: KRS 151B.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.280(3)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. This administrative regulation establishes which records of the cabinet's Office of Employment and Training shall be considered confidential in order to encourage full disclosure of information on the part of job applicants and employ-

ers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The employment and service records identified in this section shall be confidential and shall not be subject to disclosure, except as provided in KRS 151B.280(3):

(1) [~~Foreign Labor Certification forms relating to the H-2A agricultural or H-2B nonagricultural programs:~~

~~(a) ETA 750 Part A, Application for Alien Employment Certification;~~

~~(b) ETA 750 Part B, Statement of Qualifications of Alien;~~

~~(c) ETA 790, Agricultural and Food Processing Clearance Order;~~

~~(d) ETA 9127, Foreign Labor Certification Quarterly Activity Report;~~

~~(e) ETA Form 9142, Application for Temporary Employment Certification;~~

~~(f) ETA Form 9142 - APPENDIX A.2, Application for Temporary Employment Certification;~~

~~(g) Wage Survey Interview Record;~~

~~(h) H-2A (1), Employer-Furnished Housing and Facilities;~~

~~(i) Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List;~~

~~(j) H-2A Field Audit;~~

~~(k) H-2A #2, Housing Inspection;~~

~~(l) Kentucky H-2A Alien Labor Certification Program, Customer Satisfaction Survey;~~

~~(m) H-2A, #3, Employment Eligibility Verification Certificate;~~

~~(n) Kentucky Office of Employment and Training Prevailing Wage Information Request;~~

~~(o) Kentucky Office of Employment and Training Transmittal of Application for Alien Employment Certification; and~~

~~(p) Kentucky Office of Employment and Training Recruitment Notification;~~

~~(2)~~] Work opportunity tax credit:

(a) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;

(b) ETA Form 9061, Individual Characteristics Form Work Opportunity Tax Credit; and

(c) ETA Form 9063, Employer Certification Work Opportunity Tax Credit;

(2)[~~(3)~~] Trade Adjustment Assistance and Trade Re-Employment Act:

(a) TAA/TRA-855, Request for Determination of Entitlement to TAA/TRA;

(b) TAA/TRA-855A, Request for Employment Information;

(c) TAA/TRA-858, Request for Occupational/Remedial Training and Allowances While in Training;

(d) TAA-858B;

(e) ETA-9042A, Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA);

(f) TAA Certification of Training Waiver;

(g) ATAA-400A, Verification of Employment;

(h) ATAA-301, Verification of Employment for Monthly Wage Supplement ATAA;

(i) ATAA-400, Request for Alternative Trade Adjustment Assistance (ATAA);

(j) ATAA-401, ATAA Trade Certified Employer Information; and

(k) Kentucky HCTC-100, Request for Temporary KY-HCTC Bridge Grant Payment;

(3)[~~(4)~~] Employ Kentucky Operating System (EKOS):

(a) Customer Services-Agency Information Screen;

(b) Customer Services-Achievement Objectives Screen;

(c) Customer Services-Services Screen;

(d) Customer Services-Service History Screen;

(e) Customer Services-Enrollments Screen;

(f) Customer Services-Outcomes Screen;

(g) Customer Services-Comments Screen;

(h) Customer Services-Audit Screen;

(i) Customer Services-Lit/Num Testing Screen;

(j) Customer Services- Follow-Up Screen;

(k) Customer Services-Youth ISS Screen;

(l) Customer Detail-Gen. Info Screen;

(m) Customer Detail-Add'l Info Screen;

(n) Customer Detail-Programs & Public Assistance Screen;

(o) Customer Detail-Programs & Public Assistance Screen II;

(p) Customer Detail-Objective Screen;

(q) Customer Detail-Work His. Screen;

(r) Customer Detail-Ed/Lic Screen;

(s) Customer Detail-Skills Screen;

(t) Customer Detail-Saved Searches Screen;

(u) Customer Detail-Activities Screen;

(v) Customer Detail-Comments Screen;

(w) Customer Detail-Tests Screen;

(x) Customer Detail-Tests (GATB) Popup Screen;

(y) Customer Detail-e3 Info Screen;

(z) Comp Assess-Employment Screen;

(aa) Comp Assess-Education Screen;

(bb) Comp Assess-Financial Screen;

(cc) Comp Assess-Family Screen;

(dd) Comp Assess-Health Screen;

(ee) Comp Assess-Treatments Screen;

(ff) Comp Assess-Legal Screen;

(gg) Comp Assess-Housing Screen;

(hh) Comp Assess-Transportation Screen; and

(ii) Comp Assess-Comments Screen;

(4)[~~(5)~~] Workforce Investment Act Title 1, W.I.A. - 20, Eligibility and Verification; and

(5)[~~(6)~~] OET-EA1, Commonwealth of Kentucky - Microsoft Elevate America Program Voucher Request Form.

Section 2. Access to records of the Division of Unemployment Insurance shall be governed by KRS 341.190.

Section 3. Sharing of Information as authorized by law. Confidential information shall be shared only in accordance with KRS 341.190.

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

(a)[~~ETA 750 Part A, "Application for Alien Employment Certification", rev. 11/07;~~

~~(b) ETA 750 Part B, "Statement of Qualifications of Alien", rev. 11/07;~~

~~(c) ETA 790, "Agricultural and Food Processing Clearance Order", rev. 7/04;~~

~~(d) ETA 9127, "Foreign Labor Certification Quarterly Activity Report", rev. 8/05;~~

~~(e) ETA Form 9142, "Application for Temporary Employment Certification", rev. 6/10;~~

~~(f) ETA Form 9142 - APPENDIX A.2, "Application for Temporary Employment Certification", rev. 6/10;~~

~~(g) "Wage Survey Interview Record", rev. 8/07;~~

~~(h) H-2A (1), "Employer-Furnished Housing and Facilities", rev. 5/02;~~

~~(i) "Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List", rev. 4/04;~~

~~(j) H-2A, "Field Audit", rev. 10/04;~~

~~(k) Kentucky H-2A #2, "Housing Inspection", rev. 6/02;~~

~~(l) Kentucky H-2A, "Alien Labor Certification Program, Customer Satisfaction Survey," rev. 8/07;~~

~~(m) H-2A, #3, "Employment Eligibility Verification Certificate" rev. 8/09;~~

~~(n) "Kentucky Office of Employment and Training Prevailing Wage Information Request", rev. 12/06;~~

~~(o) "Kentucky Office of Employment and Training Transmittal of Application for Alien Employment Certification", rev. 5/2008;~~

~~(p) "Kentucky Office of Employment and Training Recruitment Notification", rev. 5/08;~~

~~(q)~~] Form 8850, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit", rev. 6/07;

(b)[~~(r)~~] ETA Form 9061, "Individual Characteristics Form Work Opportunity Tax Credit", rev. 12/06;

(c)[~~(s)~~] ETA Form 9063, "Employer Certification Work Opportunity Tax Credit", rev. 12/06;

(d)[~~(t)~~] TAA/TRA-855, "Request for Determination of Entitlement to TAA/TRA", rev. 4/06;

(e)[~~(u)~~] TAA/TRA-855A, "Request for Employment Informa-

tion", rev. 1/05;

(f)[~~(v)~~] TAA/TRA-858, "Request for Occupational/Remedial Training and Allowances While in Training", rev. 8/05;

(g)[~~(w)~~] TAA-858B, rev. 8/05;

(h)[~~(x)~~] ETA-9042A, "Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA)", rev. 11/05;

(i)[~~(y)~~] "TAA Certification of Training Waiver", rev. 4/07;

(j)[~~(z)~~] ATAA-400A, "Verification of Employment", rev. 4/08;

(k)[~~(aa)~~] ATAA-301, "Verification of Employment for Monthly Wage Supplement ATAA", rev. 4/08;

(l)[~~(bb)~~] ATAA-400, "Request for Alternative Trade Adjustment Assistance (ATTA)", rev. 4/08;

(m)[~~(cc)~~] ATAA-401, "ATAA Trade Certified Employer Information", rev. 4/08;

(n)[~~(dd)~~] Kentucky HCTC-100, "Request for Temporary KY-HCTC Bridge Grant Payment", rev. 1/08;

(o)[~~(ee)~~] Employ Kentucky Operating System (EKOS), "Customer Services-Screens 1 through 11", rev. 5/02;

(p)[~~(ff)~~] Employ Kentucky Operating System (EKOS), "Customer Detail-Screens 1 through 14", rev. 5/02;

(q)[~~(gg)~~] Employ Kentucky Operating System (EKOS), "Comp Assess-Screens 1 through 10", 5/02; and

(r)[~~(hh)~~] Workforce Investment Act Title 1, "W.I.A.-20, Eligibility and Verification", rev. 10/06; and

(s)[~~(ii)~~] OET-EA1, "Commonwealth of Kentucky - Microsoft Elevate America Program Voucher Request Form", rev. 10/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: November 8, 2010

FILED WITH LRC: November 10, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010 at 10 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 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 January 3, 2011. 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: William Monterosso, Executive Director, Office of Employment and Training, 275 East Main, 2C, Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: William Monterosso, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation delineates those records or reports retained by the Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training which are confidential and not subject to disclosure to third parties that either directly or indirectly identify clients or former clients of the programs listed within the regulation.

(b) The necessity of this administrative regulation: This administrative regulation is needed to clarify those records or reports which should be confidential.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.280 designates the secretary of the cabinet as the individual responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify which records or reports are confidential.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes certain records that have been utilized by the cabinet in conjunction with the appropriate federal agency to administer the H-2A and H-2B programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is being made pursuant to a recent Opinion and Order of the Franklin Circuit Court in which the court held the administrative regulation violates KRS 151B.280(3)(a) to the extent it purports to prohibit disclosure of the records.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 151B.280 provides that the secretary shall be responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client. This amendment removes certain records which are not confidential in nature.

(d) How the amendment will assist in the effective administration of the statutes: This amendment eliminates those documents from protection that are deemed not confidential which are utilized by the cabinet in administering the appropriate programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Personal information of over 4,500 current or former clients of the specified programs will not be protected from redisclosure to third parties. Businesses who hire individuals through the H-2A program also will be affected, as well as the Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be an increase in government transparency as a result of this amendment.

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

(a) Initially: No cost is associated with this amendment.

(b) On a continuing basis: No cost is associated with the continuing administration of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding is not 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: There are no fees or funding needed to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? This amendment deals with the privacy rights of current and former clients of the cabinet. The confidentiality provisions are applied uniformly to all individuals and information and tiering was not applied.

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? Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training field offices.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.28, Pub.L. 82-414 (Immigration and Nationality Act) 8 C.F.R. 274a.6(c).

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 full year? There is no significant cost related to the amended procedures and elimination of certain forms from the list of protected documents.

(d) How much will it cost to administer this program for subsequent years? There is no cost due to this procedural change and elimination of certain forms from the list of protected documents.

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:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing
(Amendment)

806 KAR 9:220. Continuing education.

RELATES TO: KRS[~~304.9-230,~~] 304.9-260, 304.9-295, 304.14-642, 304.15-700(3), Pub.L. 108-264 sec. 207

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-295(5), (7), 304.14-642(5), 304.15-720, Pub.L. 108-264 sec. 207

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 304.9-295(6)[~~(5)~~] and (8)[~~(7)~~] authorize the commissioner[~~executive director~~] to limit the number of continuing education hours carried forward to the subsequent biennium. KRS 304.14-642(5) requires the commissioner[~~executive director~~] to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the commissioner[~~executive director~~] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720, Kentucky's Life Settlement Law. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators. This administrative regulation establishes procedures for approval of agent and life settlement broker continuing education courses and obtaining credit for attending continuing education courses.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Provider" means the sponsor of a continuing education course.

Section 2. Continuing Education Course Requirements. (1) A continuing education course shall be offered by a provider approved by the commissioner, pursuant to this section:

(a) The application for approval of a provider shall be submitted on the "Provider Approval Application" form incorporated by reference, in 806 KAR 9:340; and

(b) The information shall show that the provider is qualified, through knowledge or experience, to provide prelicensing or continuing education courses and that the provider is properly authorized to charge a course fee, if any.

(2)(a) A continuing education course shall be filed with and approved by the commissioner at least sixty (60) days in advance of advertising unless the commissioner, waives the sixty (60) day period.

(b) In determining whether to grant a waiver, the commissioner shall consider whether the failure to file and approve the continuing education course within the time period specified in paragraph (a) of this subsection was due to circumstances which would reasonably justify failure to comply.

(3)(a)1. All applications for approval of a continuing education course shall be submitted on the "Course Approval Application" form incorporated by reference, in 806 KAR 9:340, which shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, in 806 KAR 9:340, and a nonrefundable initial fee of ten (10) dollars.

2. Notwithstanding the requirements in paragraph (a)1 Of this subsection, application for approval of a continuing education course being offered in more than one (1) state, may be submitted on the Nation Association of Insurance Commissioners' "Uniform Continuing Education Reciprocity Course Filing Form" incorporated by reference in 806 KAR 9:340.

(b) After review and assignment of the number of credit hours, the commissioner shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010.

(c) A continuing education course shall not be approved until all fees are paid.

(4) The commissioner shall approve a continuing education course if it meets the following requirements:

(a) The continuing education course shall contribute directly, at a professional level, to the competence of the licensee including the following subjects:

1. Insurance, annuities, and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encouragement the service and protection of customers, unless specifically excluded in subsection (5) of this section[~~Business environment, management, or organization~~];
9. Ethics; and
10. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee; and

(b) Course development and presentation:

1. The continuing education course shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;

2. The course shall be developed by persons who are qualified in the subject matter and instructional design;

3. Material shall be current, relevant, accurate, and include valid reference materials, graphics, and interactivity;

4. The course shall have clearly defined objectives and course

completion criteria;

5. Each course shall have a written outline and study materials or texts;

6. Information shall show that the instructors are qualified, through training or experience, to instruct the continuing education course competently and shall be submitted on the "Instructor Approval Application" incorporated by reference, in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, as in 806 KAR 9:340;

7. The number of participants and physical facilities shall be consistent with the teaching method specified; and

8. All courses shall include some means of evaluating quality.

(5) Continuing education credit shall not be provided for:

(a) Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

(b) Committee service of professional organizations;

(c) Computer training to develop functional skills

(d) Motivational or sales training courses; and

(e) Any course not in accordance with Section 2(4) of this administrative regulation.

(6) Any material change in a continuing education course shall be filed with and approved by the commissioner prior to use. The material change shall not be approved until the filing fees are paid in accordance with subsection (3) of this section.

(7) Biennially, providers shall renew approval of continuing education courses and instructors. Providers shall file applicable information with and pay the applicable fee specified in 806 KAR 4:010 to the commissioner prior to June 30 of even-numbered years.

Section 3. Measurement of Credit Hours. Continuing education courses shall be measured according to course type and calculated in the following manner:

(1) Classroom courses. Each credit hour of a continuing education course shall include at least fifty (50) minutes of continuous instruction or participation.

(2) Self-Study Courses. Each credit hour of a continuing education course completed online or by correspondence shall be calculated in accordance with the National Association of Insurance Commissioners'[~~Commissioner's~~] "Recommended Guidelines for Online Courses."

(3) A continuing education course, regardless of whether it is offered as a classroom course, online course, by correspondence, or self-study, shall not be credited for continuing education by a licensee more than once per continuing education biennium.

Section 4. Reasons for Withdrawal. The commissioner may withdraw approval of a continuing education course, provider, or instructor for any of the following reasons:

(1) The continuing education course teaching methods or course content:

(a) No longer meet the requirements of:

1. KRS 304.9-295; or

2. Sections 2 and 3 of this administrative regulation; or

(b) The course has been materially changed without being filed with and approved by the commissioner, in accordance with Section 2 of this administrative regulation;

(2) The continuing education course provider has certified to the commissioner that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;

(3) The continuing education course provider fails to certify to the commissioner that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or

(4) Unethical conduct of a provider or instructor.

Section 5. Product Specific Continuing Education and Training Requirements. (1) Any resident licensee selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-462, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period.

(2) Any resident licensee licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.

(3) The training requirements in subsections (1) and (2) of this section may apply toward fulfillment of a licensee's continuing education requirement as set forth in KRS 304.2-295 and 304.15-700(3), if the training has been approved as a continuing education course in accordance with Section 2 of this administrative regulation and proof of completion is made in accordance with Section 6 of this administrative regulation.

Section 6. Proof of Completion. (1)(a) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the commissioner the names of all licensees who satisfactorily completed the continuing education course.

(b) The provider shall maintain the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, for at least five (5) years and shall be subject to random audits to ensure compliance with this requirement.

(c) The certification of completion required by this section for a classroom course shall be submitted electronically on the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, through the Department of Insurance Web site, https://insurance.ky.gov/eservices/default.aspx [~~https://doi.ppr.ky.gov/kentucky/secured/Eservices/default.aspx~~].

(d)1. The certification of completion required by this section for a self-study course shall be submitted on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

2. The provider shall:

a. Forward the form to the licensee for signature; and

b. Instruct the licensee to file the form with the commissioner.

3. In addition, the information may be submitted electronically by the provider to the commissioner through the Department of Insurance Web site, https://insurance.ky.gov/eservices/default.aspx [~~https://doi.ppr.ky.gov/kentucky/secured/Eservices/default.aspx~~].

(2)(a) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least five (5) years.

(b) The certification required by this subsection shall be on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

(c) The provider of the continuing education course shall retain a copy of the certificate for at least five (5) years.

(d) Providers of continuing education courses and licensees shall make available to the commissioner's designee copies of these certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-295(2) and (9), every licensed individual required to complete continuing education[~~licensee~~] shall be responsible for ensuring that his or her[~~the licensee's~~] continuing education certificates of completion are timely filed with the department even if the provider does not fulfill its responsibilities under this administrative regulation.

(4)(a) At least six (6) hours of total credit earned per biennium shall be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed.

(b) At least three (3) hours of total credit earned per biennium shall be in ethics.

(c) Hours may be classroom, self-study, or a combination of both.

(5) Each self-study course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

Section 7. Cancellation and Reinstatement of Licenses. (1) Proof of fulfillment of a resident licensee's continuing education requirement shall be received in conjunction with license renewal in accordance with KRS 304.9-260 and 304.9-295.

(2) If the department does not receive proof of the fulfillment of a licensee's continuing education requirements on or before the deadline, pursuant to KRS 304.9-295. the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Course Attendance Roster" Form incorporated by reference, in 806 KAR 9:340, or the "Continuing Education Certificate of Completion" Form incorporated by reference, in 806 KAR 9:340, is not received by the department on or before the deadline in accordance with KRS 304.9-295.

(3) Within twelve (12) months after a license is terminated for failing to submit certification of continuing education, the license may be reissued if the licensee:

(a) Satisfies the delinquent continuing education requirements;

(b) Submits a new application with required attachments for a license; and

(c) Submits the applicable fees.

(4) If the continuing education delinquency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 8. Requests for an Extension of Time for[~~. From~~] Continuing Education. (1) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

(2) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(3) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," incorporated by reference in 806 KAR 9:340; or

(b) Request a waiver for continuing education requirements in accordance with KRS 304.9-260(3).

Section 9. Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

Section 10. Incorporation by Reference. (1) "Recommended Guidelines for Online Courses", 2005 National Association of Insurance Commissioners, 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.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 10, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 December 14, 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 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 January 3, 2011. 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, Staff Assistant, 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 procedures for approval of agent and life settlement broker continuing education courses and obtaining credit for attending continuing education courses. This regulation also establishes procedures for training required for the federal Flood Insurance Program and the Long-Term Care Partnership Act, established by 08 RS HB 259.

(b) The necessity of this administrative regulation: This administrative regulation fulfills the commissioner's statutory obligation to specify licensee education forms and processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the 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 304.9-295(6) and (8) authorize the commissioner to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to certify completion of a continuing education course. KRS 304.14-642(5) requires the commissioner to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the commissioner to promulgate administrative regulations that are necessary for the licensing of life settlement brokers. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation supplements the general statutory provisions for continuing education and carry over credit hours by specifying the continuing education procedure, the measurement of credit hours, the approval of courses and instructors, the number of hours and distribution of course work, the number of carry over hours, and exemption from continuing education.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the department's Web site address, clarifies that only individuals, not business entities, are responsible for completion of continuing education and corrects agency names.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to reflect the department's new Web site address and to provide technical clarifications.

(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 304.9-295(6) and (8) authorizes the commissioner to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to certify completion of a continuing education course. KRS 304.14-642(5) requires the commissioner to promulgate an administrative regulation to implement the Kentucky Long-Term

Care Partnership Program. KRS 304.15-720 requires the commissioner to promulgate administrative regulations that are necessary for the licensing of life settlement brokers. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators. The amendment provides technical corrections to the existing standards for continuing education requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist primarily by providing the department's correct Web site address.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts approximately 18,381 resident licensees and life settlement brokers subject to continuing education requirements. Additionally, this regulation impacts approximately 196 continuing 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: This amendment makes technical changes and clarifications and should have no new effect on licensees except to direct them to the department's new Web site address.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If costs are incurred, the budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees. The existing administrative regulation did include a ten (10) dollar fee for the initial filing of a continuing education course and an additional five (5) dollar fee for each additional approved credit hour.

(9) TIERING: Is tiering applied? No, tiering does not apply because this administrative regulation is applied in the same manner to all licensees subject to continuing education and to all providers filing for approval of continuing education courses.

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(1), 304.9-295(6), (8), 304.14-642(5), 304.15-720, Pub.L. 108-264 sec. 207

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 amendments to this regulation will not have an impact on the expenditures and revenues of the Department of Insurance.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation will not generate revenue for the Department of Insurance in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation will not generate revenue for the Department of Insurance in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer the amendments to this regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer the amendments to this regulation 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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The federal statute requiring promulgation of this administrative regulation is Pub. L. 108-264, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004.

2. State compliance standards. Section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 requires the Director of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with the insurance industry, state insurance regulators and other interested parties.

3. Minimum or uniform standards contained in the federal mandate. The minimum training and education requirements were published on September 1, 2005, in the Federal Register, Vol. 70 No. 169, at page 52117. Additionally, the National Association of Insurance Commissioners (NAIC) has adopted a uniform training bulletin for states to issue outlining the process to implement the training requirements.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET
Department of Insurance
Property and Casualty Division
(Amendment)

806 KAR 13:120. Workers' compensation[~~small~~] deductible policies.

RELATES TO: KRS 304.13-057, 304.13-167, 304.13-400-304.13-420

STATUTORY AUTHORITY: KRS 304.2-110, 304.13-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner[~~Executive Director~~] of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.13-410 provides that premium reductions for deductible workers' compensation insurance policies shall be calculated by the insurer in accordance with administrative regulations promulgated by the commissioner[~~Executive Director~~] of Insurance. This administrative regulation establishes the method of calculating premium reductions for workers' compensation insurance policies with deductibles.

Section 1. Definition. "Commissioner" is defined in KRS 304.1-050(1).

Section 2. All insurers authorized to write workers' compensa-

tion insurance in Kentucky, when establishing the premium for a workers' compensation insurance policy with a deductible ranging from $100 to $10,000 shall use only the following deductibles: $100, $200, $300, $400, $500, $1,000, $1,500, $2,500, $5,000, $7,500, $10,000.

Section 3.[~~2.~~] Application of this Administrative Regulation. (1) General.

(a) This administrative regulation applies to all insurers and licensed advisory organizations introducing or revising workers' compensation insurance deductible discounts for policies with deductibles of $100 to $10,000 or their application in Kentucky.

(b) A licensed advisory organization filing shall be self- contained and fully documented and shall not simply adopt the deductible plan or factors of another filing.

(c) An insurer may:

1. File a self-contained and fully documented deductible discount plan; or

2. Adopt[~~it may choose to adopt~~] the filed deductible plan and discounts of a licensed advisory organization or another insurer.

(2) Form of the deductible. The deductible discounts shall be determined by the multiplication of the deductible discount factors by the manual premiums. Separate deductible discounts for each deductible option shall be applicable for each hazard group as defined by the advisory organization designated by the commissioner pursuant to KRS 304.13-167[~~defined in Appendix A~~].

(3) Experience and retrospective rating. Experience rating modifications shall be based on[~~net losses and premiums, that is,~~] losses net of deductibles and manual premiums less the deductible discount. The parameters of the experience rating plan shall also be adjusted to account for the deductible.

(4) Premium discount programs. For insurers that have a premium discount program based on the standard premium of a policy, the deductible discounts shall be applied prior to the application of premium discounts. The deductible discount shall be calculated by multiplying the discount factor by the manual premium. Premium discounts then are calculated based on the standard premium, after deductibles.

Section 4. Deductible Discount Provisions. [~~3. Methodology. (1) General.~~] The deductible discount shall recognize[~~recognizes~~] the reduction in losses[~~(claim costs)~~] borne by the insurer as a result of the insured's selection of a deductible. The deductible discount shall be calculated based on a loss elimination ratio and shall include the following adjustments:

(1) The size of loss distribution including distribution including an analysis of historical data which shall determine a mathematical function or a discrete empirical distribution table;

(2)[~~The most critical factor in the calculation is the loss elimination ratio ("LER"), which estimates the percentage of losses eliminated as a result of the deductible. Typically, two (2) types of adjustments are required to calculate the deductible discount from the LER:~~

~~(a)~~] Recognition of factors which imply additional costs or savings associated with the deductible including:

(a) Credit[~~. These include credit~~] risks that the insured will not repay the insurer for the deductible amount;

(b)[~~,~~] Changes in insurer cash flow:

1. Deductibles paid by an insurer in accordance with KRS 304.13-400(3)(a) shall be considered a loan, the effects of which may be recognized in the filing; and

2. This factor shall be equal to the amount or proportion of dollars that are eliminative by the deductible times a reasonable interest rate to account for the loss in investment income

(c) Adverse selection and[~~,~~] and higher levels of risk.

1. Loss elimination ratios may be reduced for adverse selection by up to five (5) percent.

2. Filings which include greater reductions shall be clearly supported by actuarial evidence of higher loss ratios by deductible and class to clearly show that the deductible discounts are consistently high across classes and time.

3. For the initial filing, data from other states with deductibles may be used to support the selection of this factor; and

(3)[~~and possible antiselection. These types of factors are treated in this administrative regulation as adjustments to the otherwise indicated LER.~~

~~(b)~~] Recognition that many insurer operating expenses are not reduced by the introduction of deductibles including:

(a) Loss adjustment expenses including allocated and unallocated expenses;

(b) Overhead expenses; and

(c) General expenses including all expenses incurred other than loss adjustment expense, commissions, other acquisition expenses, premium taxes, licenses, and fees.[~~This consideration is treated in this administrative regulation through the deductible discount formula.~~

~~(2) Formula.~~

~~(a) The formula for pricing of deductibles in Kentucky shall be as follows:~~

$$p(x) = \frac{(1 - c - k - r + i)sd(x)E}{E + e + a}$$

~~where:~~

~~p(x) - is the discount factor for a deductible of "x";~~

~~a - is loss adjustment expenses as a percentage of standard premiums after premium discounts (based on the insurer's filings);~~

~~c - is a factor to account for credit risk;~~

~~d(x) - is the LER, which is defined as the percentage of losses eliminated by the deductible;~~

~~e - is the general expenses as a percentage of standard premium after premium discounts (based on the insurer's filings);~~

~~E - is the losses excluding loss adjustment expense as a percentage of standard premiums after premium discounts;~~

~~i - is a factor to account for the differences in investment income earned by the insurer between policies with deductible and those without a deductible;~~

~~k - is a factor to account for interest on the loan due to prepayment of losses below the deductible;~~

~~r - is a factor to account for the increased risk associated with deductible policies; and~~

~~s - is a factor to account for adverse selection.~~

~~(b) Loss adjustment expenses include allocated and unallocated expenses. General expenses include all expenses incurred other than loss adjustment expense, commissions, and other expenses that vary directly with the premium. Losses are expected losses for a policy with no deductible. The manual premium shall be used to calculate loss and expense ratios.~~

~~(c) Loss elimination ratio. The loss elimination ratio shall be determined by the size of loss distribution. To determine the size of loss distribution function it is necessary to analyze historical data. The analysis shall determine a mathematical function or a discrete empirical distribution table.~~

~~1. Source of data. The data used in the analysis shall be relevant and appropriate. The ideal data for analysis is recent Kentucky-based number of claims and dollars of loss for medical and indemnity combined, by size of loss and hazard group on a per occurrence basis. The current National Council on Compensation Insurance Unit Statistical Plan incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays, may be used subject to the following adjustment:~~

~~a. The per claimant size of loss distribution shall be adjusted by scaling the x axis by a factor of five (5) percent to ten (10) percent. That is, if s(x) is the probability density function of the per claimant size of loss distribution and f(x) is the probability density function of the per occurrence size of loss distribution, and the adjustment factor is selected as ten (10) percent, then f(x) equals s(x/1.1).~~

~~b. An alternative to this shall be to estimate mathematically the per occurrence size of loss distribution using a simulation method or by taking convolutions of the size of loss distribution. In either case, key inputs shall be the size of claims distribution and the distribution of the number of claimants per occurrence. Methodology shall be fully documented in the filing.~~

~~c. If a filer has data that is more suitable for the determination of deductible discounts than National Council on Compensation~~

Insurance Unit Statistical Plan data, its use shall be encouraged.

(d) Trending.

1. The size of loss distribution or data shall be trended to the effective period of the deductible factors. The trend factor shall be consistent with the historical data and with the most recent rate filing. The trend period shall reflect the average accident date of the underlying data and the average accident date of those policies issued during the effective period of the deductible factors.

2. While trends may affect the shape of the size of loss distribution, these adjustments are difficult to codify and are probably not significant in the short term. Thus, filers may use the assumption that the effect of the trend is uniform for claims of all sizes. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(e) Loss development. Loss development for losses below $10,000 has a significantly shorter "tail" than for total losses. The assumption that no development takes place on this layer of loss after three (3) to five (5) years may be used in the calculation of the LER. Thus, the size of loss distributions below $10,000 shall be taken as:

$F(x) = g(x)/LDF \quad x \leq \$10{,}000$

Where g(x) is the distribution function determined from the size of loss data reported as of three (3) to five (5) years and LDF is the loss development factor to ultimate for all claims. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(3) Investment income and increased risk.

(a) It is expected that loss payments by the insurer on losses from policies with deductibles shall be made later than those from policies without deductibles, since the insured is responsible for losses below the deductible which would be paid first. Losses above a deductible are also more volatile than losses from the first dollar of loss. The increased volatility increases the risk borne by the insurer.

(b) The adjustment for investment income works in a direction opposite that of the adjustment for increased risk. It shall be assumed that these items completely offset each other. If the filer wishes to include an explicit factor for one (1) of these items, the filer shall also include an explicit factor for the other, and the filing document shall support the use of these factors.

(4) Loan on the prepayment of losses.

(a) The provision in KRS 304.13-400(3)(a) that every dollar of loss that is eliminated by the deductible shall first be paid by an insurer and then be reimbursed by the insured amounts to a loan, the effects of which may be recognized in the filing. This factor shall be equal to the amount or proportion of dollars that are eliminated by the deductible times a reasonable interest rate to account for the loss in investment income.

(b) This rate shall reflect the investment earned during the period of the loan. Insurers shall reflect repayment of losses three (3) months after the claim. Thus, the factor "k" shall be determined by the following formula:

$k = (1+y)^{1/4} - 1$

Where y is the yield on ninety (90) day United States treasury bills.

(5) Adverse selection. In some lines of insurance there has been evidence of antis election with respect to deductibles, that is, those that choose to purchase insurance with a deductible tend to have losses that exceed those losses which are expected. LERs may be reduced for adverse selection by up to five (5) percent, unless a greater reduction is clearly supported by facts such as loss ratios by deductible and class which clearly show that the deductible discounts are consistently, across classes and time, high. For the initial filing, data from other states with deductibles may be used to support the selection of the factor.

(6) Credit risk. This factor is intended to account for losses below the deductible paid by insurers and not reimbursed by insured's due to bankruptcy. If the percentage of businesses that become bankrupt annually in Kentucky is expected to be "z," then the load should assume that z% of the amount "on loan" shall not be reimbursed. This shall be calculated as follows:

$c = z/4$

Factors between 0 and 2.5 percent may be used.]

Section 5.[4.] Effect on Rate Making. (1) Data. The designated advisory organization's statistical plan[Rate-making data from the National Council on Compensation Insurance Unit Statistical plan] shall [be modified to] include a field indicating the deductible on the policy. Financial data calls shall[also] segregate data by deductible.

(2) Gross versus net data. Adjustments[KRS 304.13-057 requires that net data be used in rate making. However, adjustments] to net data shall be made in the rate-making process to account for the presence of deductibles. Losses[That is, losses] shall be loaded by the loss elimination ratio, adjusted for anti-selection[LER (adjusted for) antiselection)] to a gross basis prior to the rate- making process. The loss elimination ratio[LER] and antiselection factor shall be the same as in the current approved filing.

(3) Methodology. Rate-making methods shall be modified to account for the presence of deductibles. An adjustment shall be made[For example, there shall be an adjustment] in classification rate making for differences in the distribution of exposures by deductible among classes.[Also, there shall be an adjustment] in the trending procedure for the presence of a shift in the distribution by deductible.

[Section 5. Interrogatories to be Answered in Rate Filings. Every rate filing for a workers' compensation insurance deductible shall include a completed interrogatories form as set forth in Appendix B to this administrative regulation.

APPENDIX A

TABLE OF CLASSIFICATIONS BY HAZARD GROUP

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
0005	II	1438	III	2065	II
0008	II	1452	III	2070	III
0016	II	1463	III	2081	II
0034	II	1470	III	2089	II
0035	II	1472	III	2095	II
0036	II	1624	III	2101	II
0037	II	1642	III	2105	II
0042	III	1654	III	2110	II
0050	II	1655	III	2111	II
0079	II	1699	III	2112	II
0083	II	1701	III	2114	II
0106	III	1710	III	2121	II
0113	II	1741	IV	2130	II
0169	II	1747	III	2131	II
0170	II	1748	III	2143	II
0251	II	1803	IV	2150	II
0400	II	1852	III	2156	II
0401	III	1853	II	2157	II
0908	II	1860	II	2172	I
0909	II	1924	II	2174	I
0912	II	1925	III	2177	I
0913	I	2001	II	2211	III
0917	II	2002	II	2220	II
1005	III	2003	III	2286	II
1164	IV	2014	III	2288	II
1165	III	2016	II	2300	I
1219	IV	2021	II	2302	II
1320	III	2030	III	2305	II
1322	III	2039	II	2361	I
1430	III	2041	I	2362	II
2380	I	2747	I	3082	III
2386	I	2759	II	3085	III
2388	II	2790	II	3091	II
2402	III	2802	II	3110	II
2413	II	2812	II	3111	II
2416	II	2826	II	3113	II
2417	II	2835	I	3114	II
2501	II	2836	I	3118	II
2503	II	2841	II	3119	I
2534	II	2881	II	3122	II
2570	III	2883	II	3126	II
2576	I	2913	II	3131	I

2578	II	2915	III	3132	III
2585	II	2916	II	3145	I
2586	II	2923	II	3146	II
2587	II	2942	I	3169	II
2589	II	2960	II	3175	II
2600	II	3004	III	3179	II
2623	II	3018	II	3180	II
2651	II	3022	II	3188	II
2660	II	3027	II	3220	II
2670	I	3028	II	3223	I
2683	II	3030	III	3224	I
2688	I	3040	III	3227	II
2702	III	3041	II	3240	II
2710	III	3042	II	3241	II
2714	II	3064	II	3255	I
2731	III	3066	II	3257	II
2735	II	3076	II	3270	II
2741	I	3081	III	3300	I
3303	II	3824	II	4301	II
3307	II	3826	III	4304	III
3315	II	3827	II	4307	II
3334	II	3830	III	4308	II
3336	II	3851	II	4350	II
3365	III	3865	I	4351	II
3372	III	3881	II	4352	II
3373	II	4000	IV	4360	II
3383	II	4021	III	4361	II
3385	II	4024	III	4362	III
3400	III	4034	III	4410	II
3507	II	4036	III	4417	II
3515	II	4038	I	4420	III
3548	II	4053	II	4431	I
3559	II	4061	II	4432	I
3565	I	4062	II	4439	III
3574	II	4063	II	4452	II
3581	II	4101	III	4459	II
3612	III	4111	II	4470	III
3620	III	4112	II	4484	II
3629	II	4113	II	4493	II
3632	II	4114	II	4511	II
3634	II	4130	II	4557	II
3635	II	4131	II	4558	II
3638	II	4133	II	4561	II
3639	II	4150	I	4568	III
3642	II	4206	II	4581	III
3643	III	4207	II	4583	III
3647	III	4239	III	4611	II
3648	II	4240	II	4635	IV
3681	II	4243	II	4653	II
3685	II	4244	III	4665	III
3719	III	4250	II	4670	III
3724	III	4251	I	4683	II
3726	III	4263	II	4686	III
3803	II	4273	II	4692	II
3807	II	4279	II	4693	II
3808	II	4282	II	4703	II
3821	III	4283	II	4717	I
3822	II	4299	II	4720	II
4740	III	5221	III	6236	III
4741	II	5222	III	6237	III
4743	III	5223	III	6251	III
4751	III	5348	III	6252	III
4770	IV	5402	II	6260	IV
4773	IV	5403	III	6306	III
4774	IV	5437	III	6319	III
4775	IV	5443	II	6325	III
4776	IV	5445	III	6400	II
4777	III	5462	III	6504	II
4779	IV	5474	III	6801F	III
4799	IV	5479	III	6811	III

4800 thru 4811	IV	5480	III	6824F	III
		5491	III	6826F	III
		5506	III	6834	III
4812 thru 4825	III	5507	III	6836	III
		5508	III	6843F	IV
		5538	III	6845F	III
4860 thru 4883	IV	5551	III	6854	IV
		5606	III	6872F	IV
		5610	III	6874F	III
4902	I	5645	III	6882	IV
4923	II	5651	III	6884	III
5020	III	5703	III	7133	III
5022	III	5705	III	7219	III
5037	IV	5951	II	7222	III
5040	IV	6003	III	7230	III
5057	IV	6005	III	7231	III
5059	IV	6017	III	7309F	IV
5069	III	6018	III	7313F	IV
5102	III	6045	III	7317F	IV
5146	II	6204	III	7323F	IV
5160	III	6206	IV	7327F	IV
5183	III	6213	III	7350F	IV
5188	III	6214	III	7360	III
5190	III	6216	III	7370	III
5191	III	6217	III	7380	III
5192	II	6229	III	7382	III
5213	III	6233	III	7390	III
5215	II	6235	III	7403	II
7405	IV	8006	II	8204	III
7418	IV	8008	II	8209	II
7420	IV	8010	II	8215	II
7421	IV	8013	II	8227	III
7422	IV	8017	II	8232	III
7423	III	8018	II	8233	III
7425	IV	8021	II	8235	II
7431	IV	8031	II	8236	II
7502	III	8032	II	8263	II
7515	IV	8033	II	8264	II
7520	III	8039	II	8265	III
7538	IV	8044	II	8279	II
7539	III	8046	II	8288	II
7540	IV	8047	II	8291	II
7580	III	8050	II	8292	II
7590	II	8058	II	8293	II
7600	III	8061	II	8304	III
7601	III	8102	II	8350	III
7605	III	8103	II	8380	III
7610	III	8105	II	8381	II
7704	IV	8106	III	8385	III
7720	IV	8107	III	8392	III
7855	III	8111	II	8393	III
8001	I	8116	II	8500	III
8002	II	8203	II	8601	III
8606	III	9019	III	9410	III
8709F	III	9033	II	9501	I
8710	III	9040	II	9505	I
8719	III	9052	II	9519	III
8720	III	9058	II	9521	III
8726F	III	9060	III	9522	II
8742	III	9061	II	9529	IV
8745	II	9063	II	9534	III
8748	III	9077F	II	9545	III
8755	III	9079	II	9549	III
8800	II	9088	IV	9552	III
8803	III	9089	II	9586	I
8810	II	9093	I	9600	II
8820	II	9101	II	9620	II
8829	II	9102	III		
8831	II	9154	III		
8832	III	9156	II		

~~8833~~	~~II~~	~~9178~~	~~II~~		
~~8835~~	~~II~~	~~9179~~	~~II~~		
~~8837~~	~~II~~	~~9180~~	~~III~~		
~~8868~~	~~II~~	~~9182~~	~~II~~		
~~8901~~	~~III~~	~~9186~~	~~III~~		
~~9014~~	~~II~~	~~9220~~	~~II~~		
~~9015~~	~~III~~	~~9402~~	~~III~~		
~~9016~~	~~II~~	~~9403~~	~~III~~		

~~iv) Investment income and increased risk factors (list on separate sheet if necessary):~~

~~a) Do they offset each other? Yes Y No Y~~

~~b) If NO, is documentation provided? Yes Y No Y~~

~~v) Factor to account for the loan on prepayment of losses (list on separate sheet if necessary):~~

~~vi) Adverse selection adjustment:~~

~~If the above factor is greater than 5 percent, provide documentation.~~

~~vii) Credit risk adjustment:~~

~~5. How are deductibles accounted for in the rate-making methodology?~~

~~6. How are deductibles accounted for in the experience rating plans?~~

~~Form WCD-1 (11-92)~~]

SHARON P. CLARK; Commissioner
ROBERT VANCE, Secretary

APPROVED BY AGENCY: November 10, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall be held on December 21, 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 December 14, 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 January 3, 2011. 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, Staff Assistant, 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 method of calculating premium reductions for workers' compensation insurance policies with deductibles.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 304.13-410 which requires an insurer to calculate a premium reduction for a deductible workers' compensation policy in accordance with administrative regulations promulgated by the commissioner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the method of calculating premium reductions for workers' compensation insurance policies with deductibles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the deductibles that may be used and establishes the formulas to be used in calculating the premium discount applicable to the various deductibles.

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

(a) How the amendment will change this existing administrative regulation: This amendment will adopt the updated hazard groups defined by the National Council on Compensation Insurance, the advisory group designated by the commissioner pursuant to KRS 304.13-167.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to recognize the changes in the classifications and hazard groups as defined by NCCI, the advisory organization designated by the commissioner pursuant to KRS 304.13-167.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.13-410 requires an insurer to calculate a premium reduction for a deductible workers' compensation policy in accordance with administrative regulations promulgated by the commissioner. This amendment eliminates the specific formula for determination of a deductible discount while identifying the elements that must be utilized by insurance carriers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment recognizes the changes in the classifications and hazard groups as defined by NCCI, the advisory organization designated by the executive director pursuant to KRS 304.13-167 since 1993.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 649 insurers and workers' compensation self-insured groups writing workers' compensation insurance in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers will be required to calculate premium discounts for deductible policies based on the required elements in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As this regulation is amending an existing process to implement an industry standard process for calculating discounts for workers' compensation deductible policies, the Department does not believe that insurers will experience a significant cost for compliance. Rather, the changes to this administrative regulation will mirror current business practices of insurers in other states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, insurers will be correctly calculating the statutorily mandated discounts for workers' compensation deductible policies.

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

(a) Initially: There should not be an initial cost to the Department of Insurance to implement this administrative regulation.

(b) On a continuing basis: There should not be a continuing cost to the Department of Insurance 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 will be necessary to implement the amendments to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurers writing workers' compensation deductible policies.

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 304.13-410

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 state 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? This regulation will not generate revenue for the state in 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 administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer this regulation 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
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.215[~~, EO 2008-668~~]

STATUTORY AUTHORITY: KRS 230.215, 230.260[~~(3), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215[~~(2)~~] and 230.260[~~(3)~~] authorize the Kentucky Horse Racing Commission [~~Authority~~] to promulgate administrative regulations regulating horse racing in Kentucky. [~~EO 2008-668, effective July 3, 2008, 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 requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means the Race Track Operations System created and maintained by InCompass, a wholly owned subsidiary of the Jockey Club, or another software application available online and approved by the commission.

Section 2. Registration Required. (1) Except as provided by subsection (2) of this section, a horse shall not be entered or raced in this state unless:

(a) Duly registered [~~and named~~] in the [~~registry office of the~~] Jockey Club breed registry [~~in New York~~]; and

(b) The registration certificate or racing permit issued by the Jockey Club for the horse is on file with the racing secretary; or

(c) The information contained on the registration certificate or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may for good cause waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner. The new owner may report the change in ownership to InCompass so that it can be updated in the electronic registration system.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate or racing permit prior to a horse being entered or raced in Kentucky.

(5) The stewards may at any time require presentation of a horse's registration certificate or racing permit. Failure to comply with this provision may result in imposition of penalties pursuant to 810 KAR 1:028. [~~The Jockey Club registration certificate of each horse shall be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the association grounds.~~]

Section 3. [~~2.~~] Ringers Prohibited. (1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with the Jockey Club [~~in New York~~]. If a horse's name is changed with [~~by~~] the Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse he owns or that[~~, or which~~] is in his care[~~,~~] to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless the horse has:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau; [~~or~~]

(b) An electronic horse identification microchip that [~~which~~] accurately identifies the horse and is compliant with the international standards ISO 11784; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with the Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4.[~~3.~~] Denerving. (1) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, [~~or~~] racing permit, or entry in the electronic registration system. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure this [~~that~~] fact is correctly designated [~~on the registration certificate or racing permit~~].

(2) A horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed [~~bilaterally~~], shall not be entered or raced in this state.

(3) A horse that [~~whose volar or plantar nerve has been removed unilaterally or which~~] has had a posterior digital neurectomy (known as low nerved), may be permitted to race if the denerving [~~deserving~~] has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. Only horses that have in fact had a neurectomy

shall be so reported [~~A person shall not report a horse as having a neurectomy if in fact the horse has not had a neurectomy~~].

Section 5.[~~4.~~] Bleeders. (1) A horse that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the chairman [~~secretary~~] of the commission or his designee who shall make a final decision on the issue.

Section 6.[~~5.~~] Health Certificate Required. A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission [~~association grounds~~] unless within ten (10) days prior to arrival on the [~~association~~] grounds, the horse has been examined by an accredited practicing veterinarian who shall certify:

(1) The horse's identity [~~of the horse~~];

(2) The horse's body temperature at the time of examination [~~Temperature when examined~~];

(3) That, to the best of the examining veterinarian's [~~his or her~~] knowledge and belief, the horse is free from any infectious or contagious disease, or exposure thereto, and observable ectoparasites; and

(4) Any other matters as may be required from time to time by the Kentucky State Veterinarian.

(5) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations. [~~accompany stall applications and be included in the condition book.~~]

Section 7.[~~6.~~] Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 8.[~~7.~~] Age Restrictions. A maiden six (6) years of age or older that[~~which~~] has made five (5) life time starts on the flat shall not be entered or start.

Section 9.[~~8.~~] Fillies and Mares Bred. (1) A [~~Any~~] filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare that has been covered by a stallion shall not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's [~~filly~~] or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 10.[~~9.~~] Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require [~~cause~~] a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list, or is suspended, in any racing jurisdiction;

(3) Has been administered any drug in violation of 810 KAR 1:018;

(4) Is blind or has seriously impaired vision in both eyes;

(5) Is not correctly identified to the satisfaction of the stewards; or

(6) Is owned wholly or in part by[~~,~~] or is trained by[~~,~~] an ineligible person.

Section 11.[~~10.~~] Equipment. (1) Riding crops and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse from [~~in~~] its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle may weigh no more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) [~~A horse shall not race in ordinary training shoes.~~

~~(8)~~] Bar shoes may be used for racing only with permission of the stewards.

(8)[~~(9)~~] Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that[~~which~~] may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)(a) Any riding crop[~~(10)(a) All riding crops~~] may be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and [~~including~~] training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of one-half (1/2) inch.

(d) The only additional feature that may be attached to the riding crop is a flap that[~~.~~

~~1. A flap~~] shall have a:

1.[~~a.~~] Maximum length from the end of the shaft of one-half (1/2) inch;

2. [~~and b.~~] Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

3.[~~2.~~] The flap from the end of the shaft shall not contain any reinforcements or additions;

4.[~~3.~~] There shall not be binding within seven (7) inches of the end of the flap;

5.[~~4.~~] The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

6.[~~5.~~] The flap shall have a similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)[~~(11)~~](a) The following shall not be used on the front shoes of thoroughbred horses while racing or training on any [~~all~~] racing surface [~~surfaces~~]:

1. Horse shoes (racing plates) that[~~which~~] have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of thoroughbred horses while racing or training.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission is prohibited.

Section 12.[~~11.~~] Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and the Jockey Club promptly. The alteration shall be noted on the horse's registration certificate, racing permit, or entry in the electronic system.

Section 13. A licensed racing association and training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian. [~~The racing secretary shall note any alteration in the sex of a horse on the horse's registration certificate.~~]

Section 14.[~~12.~~] Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination [~~Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky~~] at the discretion of the commission and at a facility designated by the commission, through its designee, as follows:

(1) If a postmortem examination is to be conducted, the commission, through its designee, shall take possession of the horse upon death and shall not return the remains of the horse after completion of the postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse;

(2) When a postmortem examination is to be conducted, the commission, through its designee, shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs. The commission may submit blood, urine, bodily fluids, or other biologic specimens collected before euthanization or during a postmortem examination for analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation; and

(3) All licensees are required to comply with postmortem examination requirements. In proceeding with a postmortem examination the commission, through its designee, shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements. [~~steward and the commission veterinarian.~~]

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 11, 2010

FILED WITH LRC: November 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2010 at 10 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by December 15, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for horses to participate in horse race meetings in Kentucky, including registration requirements and permitted equipment.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the requirements for horses to participate in horse race meetings in Kentucky, to ensure the safety and welfare of the horse and to create a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky. This administrative regulation establishes the requirements for horses to participate in horse race meetings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for registration and identification of horses that run or train in Kentucky. It requires a horse to be serviceable and restricts the types of equipment that may be used on a thoroughbred race horse. It provides the postmortem examination 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: Under the current regulation, a horse may not be entered or raced in Kentucky unless its registration certificate or racing permit is on file with the racing secretary at the relevant racing association. The amendment allows horses to be entered or race in Kentucky if their registration information is available through the Race Track Operations System, or other software application available online and approved by the commission. The amendment also requires horses stabled on the grounds of a training center under the jurisdiction of the commission to obtain a Health Certificate and to undergo postmortem examinations in some circumstances. Additionally, the amendment prohibits the brutal or indiscriminate use of a riding crop or any other equipment on a horse at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow horsemen to use available, commission approved technology to enter and run their horses in Kentucky. It is also necessary to prohibit the brutal or indiscriminate use of a riding crop or other equipment on a horse at any time on the grounds of a licensed association or training center under the jurisdiction of the commission. The amendment also clarifies that rules with regards to Health Certificates and postmortem examinations apply to training centers. Finally, the amendment clarifies the postmortem examination process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky. The amendment establishes the requirements for horses to participate in horse race meetings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the requirements for registration and identification of horses that run or train in Kentucky. It requires a horse to be serviceable and restricts the types of equipment that may be used on a thoroughbred race horse. It clarifies the postmortem examination process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, training centers under the jurisdiction of the commission, owners, and trainers 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 associations, through the racing secretary, will be able to confirm a horse's eligibility to enter or run in a race through the Race Track Operations System. Owners and trainers will be able to enter their horses without having to file a horse's registration certificate or racing permit with the racing secretary. Horses stabled on the grounds of a training center under

the jurisdiction of the commission will be required to have a valid Health Certificate and will be subject to postmortem examinations under some circumstances.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Racing associations, owners, and trainers will now have the option of entering and racing a horse in Kentucky if that horse's information is available through the Race Track Operations System. This will streamline and simplify the process of entering and racing horses. Training centers will have assurance that the horses stabled on their grounds are not carrying disease or illness that could affect their horse population.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional 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 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

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 estimated change in expenditures or revenues.

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

(c) How much will it cost to administer this program for the first year? There is no anticipated cost to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated cost to administer this regulation.

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:027. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240[~~(2)~~], 230.290, 230.310, 230.320 [~~230.3209~~]

STATUTORY AUTHORITY: KRS 230.260[~~(3)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. 230.260 grants the commission the [~~Authority full~~] authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. [~~The function of~~] This administrative regulation establishes is to establish requirements for entry, subscription, and declaration of thoroughbred horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to these administrative regulations [~~under 810 KAR Chapter 1. An entry shall be made by the owner, the trainer, or a licensed authorized agent of the owner or trainer~~].

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate, racing permit, or entry in Race Track Operations System created and maintained by InCompass, a wholly owned subsidiary of the Jockey Club, or other software application available online and approved by the commission.

(a) A horse shall not race unless registered pursuant to 810 KAR 1:012 or otherwise correctly identified to the satisfaction of the stewards [~~as being entered~~].

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 1:028 [~~1:018~~] for incorrect identification.

(5)(a) A horse that bleeds [~~requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH)/bleeding,~~] shall be registered with the commission [~~Authority~~] veterinarian prior to entry.

(b) [~~Removal from registration shall require Authority veterinarian approval.~~

~~(c) After inclusion, additional notification shall not be required.~~

~~(d)~~] A horse that [~~which~~] is not properly registered shall not be permitted to race with furosemide or an adjunct bleeder medication antibleeder medications, drugs, or substances.

(c)[~~(e)~~] The racing program shall indicate usage.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards. [~~Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.~~]

(7) A horse shall not be entered in two (2) races to be run on the same day.

(8)(a) A horse that [~~which~~] has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards [~~of the meeting~~].

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) of which is within twenty (20) days of entry.

(c) If a horse has performed the requisite workout, but [~~through no fault of the trainer,~~] the workout does not appear in the past performances through no fault of the trainer, the horse shall be permitted to start.[~~, and~~] The correct workout shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutual windows are opened and shall be displayed until the conclusion of the race in which the horse is entered [~~least fifteen (15) minutes prior to the first race and shall be displayed for the duration of the day's racing~~].

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating [~~to the starter~~] that the horse has been adequately trained to race from the starting gate.

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be considered only if the race is taken off the turf.

Section 4. Limitation as to Spouses. (1) An entry in a race shall not be accepted for a horse owned wholly or in part [~~by, or~~] trained by[~~,~~] a person whose spouse is under license suspension at the time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey[~~, depending on the severity of the offense~~] has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries. (1) No more than two (2) horses having common ties through training shall be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, shall be joined as a mutual entry and single betting interest, except as provided in subsection (5) of this section.

(3) No more than two (2) horses having common ties through ownership shall be joined as a mutual entry in a purse race. If making a double entry of horses owned wholly[~~,~~] or in part by the same owner or spouse[~~,~~] a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any thoroughbred stakes race with added money of $50,000 or more, the racing secretary may uncouple mutual entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible[~~,~~] shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, [~~or~~] sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter [~~it~~], the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) Entries that[~~which~~] have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission [~~Authority~~] as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that[~~which~~], in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2)[~~,~~

~~(2)~~] horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare [~~off~~] the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day that [~~and which~~] may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the following conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split;

(b) Division of entries in any split stakes race may be made

according to age, [~~or~~] sex, or both; and

(c) Entries for any split race not divided by any method provided for in this administrative regulation[~~,~~] shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) Post positions in split races shall be redetermined by lot. Owners, trainers, and their representatives shall have the opportunity to be present at the redetermination.

(3) The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by preference [~~into the body of a race by lot~~], unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the [~~an~~] also-eligible list for a race on the present day that has been drawn into a race as a starter on a succeeding day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible.

(5) A horse on the also-eligible list [~~Also-eligibles~~] shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses that [~~which~~] were entered but denied an opportunity to race because they were eliminated from a race included [~~programmed~~] in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission [~~Authority~~] at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also [~~is~~] entered for a race on the succeeding day. This includes stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four hours prior to post time for the race by obtaining written approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses [~~also-eligibles~~] has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary[~~,~~] or his assistant[~~,~~] at or before the time conspicuously posted as "scratch time."

(3) A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(4) In a purse race, a horse that is [~~horses that are~~] physically disabled or sick shall be permitted to be scratched first. If horses representing more than ten (10) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer [~~owners or trainers~~] may be permitted [~~at scratch time~~] to scratch horses without physical excuses at scratch time, down to a minimum of ten (10) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wishes [~~wish~~] to scratch their horses.

(5) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's [~~Authority's~~] veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(6) Each licensed [~~For a period of one (1) year following the effective date of this administrative regulation, each Kentucky~~] racing association offering thoroughbred racing shall keep records and statistics documenting the effect upon field sizes of the six (6) [~~nine (9)~~] day veterinarian list requirement in subsection (5)[~~(4)~~] of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or similar publication as the commission [~~Authority~~] considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

ROBERT M. BECK, Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 11, 2010

FILED WITH LRC: November 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2010 at 10 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by December 15, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

regulation to the contact person below.

CONTACT PERSON: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry, subscription and declaration of thoroughbred horses in order to race.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements for entering a horse in a race in Kentucky, including outlining the procedures for scratches and drawing of post positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulation conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures for entering a thoroughbred horse to race in Kentucky, including procedures for scratches and drawing of post positions.

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

(a) How the amendment will change this existing administrative regulation: The amendment allows horses to be entered or race in Kentucky if their registration information is available through the Race Track Operations system, or other software application available online and approved by the commission.

(b) The necessity of the amendment to this administrative regulation: The amendment is consistent with amendments to 810 KAR 1:012 and is necessary to allow horsemen to use available, commission approved technology to renter and run their horses in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment gives horsemen the option to use available, commission approved technology to renter and run their horses in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, owners and trainers 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 associations, through the racing secretary, will be able to confirm a horse's eligibility to enter or run in a race through the Race Track Operations System. Owners and trainers will be able to enter their horses without having to file a horse's registration certificate or racing permit with the racing secretary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Racing associations, owners, and trainers will now have the option of entering and racing a horse in Kentucky if that horse's information is available through the Race Track Operations System. This will streamline and simplify the process of entering and racing horses.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding 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 increase in 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

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 estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:034. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 318.054, 318.130

STATUTORY AUTHORITY: KRS 318.130, 318.054 [~~318.134~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.054 authorizes the department [~~office~~], after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes the process by which providers of continuing education courses are approved and registered with the department [~~office~~] and continuing education [~~their~~] courses approved.

Section 1. Requirements for Continuing Education Providers.

(1) Continuing education providers shall either be a:

(a) Trade association with affiliation to the plumbing trade;

(b) Trade school;

(c) College;

(d) Technical school;

(e) Business dedicated solely to providing continuing education and which provides at least one (1) course quarterly within each congressional district;

(f) Plumbing contracting company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or

(g) Plumbing manufacturer or distributor that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2) Provider Registration. [~~(1)~~] The department [~~office~~] shall maintain a list of approved continuing education course providers. An approved provider shall meet the criteria established in Section 2 of this administrative regulation.

(3)[~~(2)~~] Each continuing education course provider shall register with the department [~~office~~] as required by subsection (3) of this section before submitting course materials for department approval [~~by the office~~]. Registration shall be valid for two (2) years from the date of issuance.

(4)[~~(3)~~] Course providers shall register on Form PLB-3 provided by the department [~~Office~~] and shall include the following:

(a) The company name, mailing address, email address, telephone, and fax numbers of the provider;

(b) Contact person[~~The names and addresses of any persons who have received or will receive any portion of revenues generated from the course~~]; and

(c) The fee, if any, to be charged to participants.

(5) Each[~~(4) The~~] course provider shall report to the department [~~Office~~] any change to the information submitted in the initial application[~~registration~~] within thirty (30) days after the change takes effect.

(6) For each course approved the provider shall distribute to each applicant in attendance a questionnaire for the purpose of rating the course.

(a) Questionnaires shall include:

(i) Name of the course;

(ii) Date the course was taken;

(iii) Question(s) ranking the quality of the course;

(iv) Question(s) ranking the quality of the course materials provided; and

(v) Question(s) ranking the quality of the instructor.

(b) Completed questionnaires shall be submitted with license renewal applications.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department [~~office~~] on Form PLB-4 provided by the department [~~office~~] for each course offered by a course provider.

(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the department [~~office~~]. Applications shall be submitted at least sixty (60) days prior to the course offering.

(3) A continuing education course shall provide instruction in at least one of the subject areas specified in Section 3 of this administrative regulation.

(4) The course application shall include the following:

(a) A course syllabus;

(b) Name of the course;

(c) Name and registration number of the provider;

(d) Name of the instructor or presenter along with his or her qualifications;

(e) The amount of actual time needed to present the course; [~~and~~]

(f) The objectives of the course; and

(g) A statement of the practicality of the course to the plumbing trade.

(5) Content changes made to the course shall require subsequent submission [~~resubmission~~] to the department for review and approval[~~office~~].

(6) Course approval shall be valid for two (2) years from the date approved by the department[~~office~~].

(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) Providers shall submit to the department a quarterly schedule including date and locations of courses by January 1, April 1, July 1, and October 1 annually and the department [~~office dates and locations of courses ninety (90) days in advance, and the office~~] shall be notified at least thirty (30) days prior to a course's offering of changes made to scheduled courses.

(9) The department shall receive written notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of Plumbing [~~Providers shall provide at least one (1) course in each of the congressional districts within each quarter of the year~~].

(10) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to a scheduled class unless the Governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation; [~~Except for a cancellation due to an emergency, a notification of cancellation shall be made no less than five (5) working days prior to the scheduled class;~~]

(b) If the scheduled class is canceled, providers shall, at the option of the registrant, issue a full refund or allow the registrant to attend a rescheduled [~~reschedule the~~] course;

(c) A registrant who notifies a provider of cancellation prior to five (5) working days of a scheduled course may choose either [~~shall be allowed the choice of~~] a full refund or to attend a subsequent course; and

(d) Providers shall not cancel a course with ten (10) or more registrants, unless cancellation is the result of an emergency.

Section 3. Continuing Education Course Content. (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.

(2) Courses relating to business shall include one (1) or more of the following:

(a) Business law;

(b) Accounting practices; or

(c) Insurance.

(3) Courses relating to job safety shall directly relate to the construction trade.

(4) Courses related to the Kentucky state plumbing code shall include one or more of the following:

(a) KRS Chapter 318;

(b) Basic plumbing principles;

(c) 815 KAR 20:001 through 815 KAR 20:195;

(d) Kentucky Building Code; or

(e) Kentucky Residential Code.

(5) Providers requesting approval of courses for topics not listed in this section shall demonstrate the relevancy of the topic to the plumbing trade.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain [~~the following records for each course~~] for three (3) years the following records for each approved [~~the date of the~~] course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue [~~complete~~] a certificate of completion for each participant who enrolled and completed [~~completing~~] an approved continuing education course.

(b) Certificates of completion shall contain [~~at a minimum include~~] the following information about the individual participant:

1. Name;
2. Address;
3. License number(s) [~~number~~];
4. Date of attendance; and
5. Course(s) [~~Courses~~] completed.

(c) One (1) copy of each certificate of completion shall be:

1. Sent to the department [~~office~~] electronically;

2. Retained on file by the provider in compliance with subsection (1) of this section; and

3. Given to the participant upon completion of the course.

Section 5. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date [~~of the provider shall be provided to the office within ten (10) days upon written request~~].

(2) Representatives of the department [~~office~~] may, at any time, attend an approved continuing education [~~a~~] course to ensure that the course meets the stated objectives and that applicable requirements are being met [~~is meeting its stated objectives and that applicable requirements are being followed~~].

Section 6. Disciplinary Action. The department [~~office~~] may deny, suspend or revoke approval of any course provider or may issue a fine to any course provider who:

(1) Obtains or attempts to obtain registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to the information;

(3) Advertises a course as being approved by the department [~~office~~] before the approval is received; or

(4) Fails to comply with the requirements of this administrative regulation.

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

(a) Form PLB-3, "Application for Approval as a Plumbing Continuing Education Course Provider", November 2010 [~~for Plumbing Licensure", October, 2007~~]; and

(b) Form PLB-4, "Application for a Plumbing Continuing Education Course Approval", November 2010. [~~for Plumbing Licensure", October, 2007.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [~~Office~~] of Housing, Buildings and Construction, Division of Plumbing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 15, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:A public hearing on this administrative regulation shall be held on December 21, 2010, at 10 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for approval of Plumbing continuing education courses and continuing education providers.

(b) The necessity of this administrative regulation: KRS 318.054 authorizes the department, after review by the State Plumbing Code committee, to adopt continuing education requirements for plumbers. KRS 318.130 authorizes the department to adopt any other reasonable regulation to administer the plumbing chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for approval as a Plumbing continuing education course provider and the requirements for approval of Plumbing continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the requirements for continuing education providers and continuing education classes to gain approval as authorized by KRS 318.054 and 3418.130.

(2) If 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 forms and provides clarification regarding requirements for being approved as a continuing education provider and for gaining continuing education course approval from the Division of Plumbing.

(b) The necessity of the amendment to this administrative regulation: Updating requirements for continuing education providers will better serve the constituents of the Commonwealth and broaden the pool of continuing education providers.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 318.130, the department may adopt regulations to administer the State Plumbing code and licensing if reviewed and recommended by the Plumbing Code Committee. The committee reviewed and recommended these amendments at the November 10, 2009 meeting.

(d) How the amendment will assist in the effective administration of the statutes: With the recommended amendments, the number of continuing education providers eligible for providing continuing education to plumbers is increased. This serves licensees in that more courses are likely to be offered than previously.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, Division of Plumbing, and plumbing continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Plumbing continuing education providers shall submit an application for approval as a provider and for each course to be administered by the provider. Additionally, the provisions for cancellation of courses and minimum offering of plumbing continuing education courses is set forth in this regulatory amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to plumbing continuing education course providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include standardization of the approval procedure for Plumbing continuing education courses which will be accepted towards annual continuing education requirements necessary for license renewal.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: Existing plumbing funds will be utilized for the administration of approving plumbing continuing education providers and Plumbing continuing education courses.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. All Plumbing continuing education course providers and Plumbing continuing education courses will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, will be impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.054 and 318.130.

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 amended administrative regulation establishes no new fees nor creates new expenditures.

(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 regulatory amendment will result in no new revenues or expenditures.

(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? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: There is no anticipated fiscal impact from this amended administrative regulation to state or local government.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

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 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 Update to the 2010-2012 State Health Plan (October 13, 2010) as amended October 13[~~August, 2010~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 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: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.m.

PUBLIC HEARING AND COMMENTS: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2010, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 cancelled. 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 January 3, 2011. 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 TEIRING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(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. Changes to the State Health Plan are necessary to provide Certificate of Need application review criteria for Psychiatric Residential Treatment Facility Level I and Psychiatric Residential Treatment Facility Level II. This administrative regulation incorporates the 2010 Update to the 2010 - 2012 State Health Plan by reference to provide the needed review criteria.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 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 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 to establish Certificate of Need requirements for Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.

(b) The necessity of the amendment to this administrative

regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. KRS 261B.450 established Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II. The State Health Plan requires revision to incorporate Certificate of Need requirements for these new licensure types.

(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 to provide Certificate of Need requirements.

(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 Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II.

(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 Psychiatric Residential Treatment Facilities Level I and Psychiatric Residential Treatment Facilities Level II are now established. These changes may increase access to these services in the state where access may not be available.

(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. This administrative regulation incorporates the 2010 Update to 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
Office of Health Policy
(Amendment)

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 program. 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, Level I psychiatric residential treatment facility (Level 1 PRTF), Level II psychiatric residential treatment facility (Level II PRTF), cardiac catheterization, 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, 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: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2010, at 9 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 cancelled. 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 January 3, 2011. 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: Carrie Banahan or Shane O'Donley, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's timetable for submission of certificate of need applications. The amendment to this administrative regulation will recognize the creation of two additional licensure categories pursuant to 902 KAR 20:400 titled Level I Psychiatric residential treatment facility and Level II Psychiatric residential treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, and 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetable for submission of certificate of need applications.

(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 216B.010, 216B.062, and 216B.990 by establishing the timetables for submission of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: This amendment will assign Certificate of Need applications to establish Level I Psychiatric Residential Treatment Facilities and Level II Psychiatric Residential Treatment Facilities to a specific CON application batching cycle.

(b) The necessity of the amendment to this administrative regulation: The Office of the Inspector General filed an administrative regulation which creates a new licensure category. Since this category of service is not exempt by statute from CON requirements, the Office of Health Policy must assign this facility category to an appropriate batching cycle schedule. This amendment accomplishes that requirement.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 216B.062, applications for certificates of need shall be submitted according to timetables established by the cabinet by promulgation of administrative regulation, pursuant to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: Promulgation of this amended administrative regulation under KRS Chapter 13A shall establish an appropriate batching cycle to assure that applications for Level I Psychiatric Residential Treatment Facilities and Level II Psychiatric Residential Treatment Facilities will be eligible for consideration at set intervals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application to establish a Level I Psychiatric Residential Treatment Facility or a Level II Psychiatric Residential Treatment Facility.

(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: As the timetables set forth in the administrative regulation are currently established and operational, no new action will be required for regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): As the timetables set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish Level II psychiatric residential treatment facility in compliance with KRS Chapter 216B.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these timetables as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the timetables are already used as part of our normal operations so no additional funding will be 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 increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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 any revenue.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.990, 42 C.F.R. 441.156, 42 C.F.R. 483

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.450-216B.459, 314.011(8), 314.042(8), 320.240(14)[.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in Level I and Level II psychiatric residential treatment facilities.

Section 1. Definitions. (1) "BAMT" or "Blood Assay for Mycobacterium tuberculosis" means a diagnostic blood test that assesses for the presence of infection with M. tuberculosis. Results are reported as positive, negative, indeterminate, or borderline.

(2) "BAMT conversion" means a change in test result, on serial testing, from negative to positive.

(3) "Boosting" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TST) may restore the sensitivity. An initially small TST reaction size is followed by a substantial reaction size on a later test, and this increase in millimeters of indurations may be confused with a conversion or a recent M. tuberculosis infection. Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(4) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

(5)[~~(2) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.~~

~~(3)~~] "Direct-care staff" means residential or child-care workers who directly supervise residents.

(6) "Directly Observed Therapy" or "DOT" means an adherence-enhancing strategy in which a healthcare worker or other trained person watches a patient swallow each dose of medication. DOT is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI). DOT for treatment of LTBI is called Directly Observed Preventive Therapy (DOPT).

(7) "Emergency safety intervention" is defined by 42 C.F.R 483.352 as the use of restraint or seclusion as an immediate response to an emergency safety situation.

(8) "Emergency safety situation" is defined by 42 C.F.R. 483.352 as an unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(9)[~~(4)~~] "Freestanding" is defined by[~~in~~] KRS 216B.450(3).

(10)[~~(5)~~] "Governing body" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the facility is vested.

(11) "Home-like" is defined by KRS 216B.450(4).

(12) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection. The diameter of the firm area is measured transversely to the nearest millimeter to gauge the degree of reaction, and the result is recorded in millimeters. A reaction of ten (10) millimeters or more of induration is considered highly indicative of

tuberculosis infection in a healthcare setting. A reaction of five (5) millimeters or more of induration may be significant in certain individuals, including HIV-infected persons, persons with immunosuppression, or recent contacts of persons with active TB disease.

(13) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease has manifested.

(14)[~~(6)~~] "Licensure agency" means the Cabinet for Health and Family Services, Office of Inspector General.

(15)[~~(7)~~] "Living unit" means:

(a) The area within a single building that is supplied by a Level I[~~the~~] facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(16)[~~(8)~~] "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(17)[~~(9)~~] "Mental health associate" means:

(a) An individual with a minimum of a bachelor's degree in a mental health related field; a registered nurse; or a licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or

(b) An individual with a high school diploma or an equivalence certificate and at least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(18)[~~(10)~~] "Mental health professional" is defined by[~~in~~] KRS 645.020(7).

(19)[~~(11)~~] "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(20)[~~(12)~~] "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) as a Level I facility or a Level II facility.

(21) "Qualified mental health personnel" is defined by KRS 215B.450(6).

(22) "Qualified mental health professional" is defined by KRS 216B.450(7).

(23)[~~(13)~~] "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(24) "Tuberculin Skin Test" or "TST" means a diagnostic aid for finding M. tuberculosis infection. A TST is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). TST results shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.

(25) "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities). The bacteria may attack any part of the body, but disease is most commonly found in the lungs (pulmonary TB). Pulmonary TB disease may be infectious; extra pulmonary disease (occurring at a body site outside the lungs) is not infectious, except in rare circumstances. If the only clinical finding is specific chest radiographic abnormalities, the condition is termed "inactive TB" and may be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or specific chest radiographic finding.

(26) "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected. A TST conversion is >10 mm increase in the size of the TST induration during a two (2) year period in:

(a) A health care worker with a documented negative (<10 mm) baseline two-step TST result; or

(b) A person who is not a health care worker with a negative (<10 mm) TST result within two (2) years.

(c) A TST conversion is presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

(27) "Two-step TST" or "two-step testing" means a series of two (2) TSTs administered seven (7) to twenty-one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including healthcare workers and residents of psychiatric residential treatment facilities to reduce the likelihood of mistaking a boosted reaction for a new infection.

(29)[~~(14) "Special treatment procedures" means any procedure such as chemical restraint, mechanical restraint, personal restraint, or seclusion which may have abuse potential or be life threatening.~~

~~(15)~~] "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant profession[~~professional~~].

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a Level I or Level II PRTF shall complete and submit to the Office of Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) If an entity seeks to operate both a Level I and a Level II PRTF and is granted licensure to operate both levels, a separate license shall be issued for each level.

(3) The initial and annual fee for licensure as a Level I PRTF shall be $270.

(4)(a) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds or less shall be $270.

(b) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds to fifty (50) beds:

1. Shall be $270; and

2. A fee of ten (10) dollars shall be added to the minimum fee of $270 for each bed beyond the ninth bed.

Section 3. Location. [~~Applicability.~~](1)(a) A Level I psychiatric residential treatment facility shall be located in a freestanding structure.

(b) A Level II PRTF may be located:

1. In a separate part of a psychiatric hospital;

2. In a separate part of an acute care hospital;

3. In a completely detached building; or

4. On the campus of a Level I PRTF if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I PRTF.

(c) A licensed Level II PRTF shall not be licensed for more than fifty (50) beds.

(2) In accordance with KRS 216B.455(5) multiple Level I PRTFs may be located on a common campus if each is freestanding.

(3)(a)1. If a Level I or Level II psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF,[~~the following shall apply:~~

~~(a)~~] the residents of the Level I or Level II PRTF and the licensed facility with which it shares grounds shall not have any joint activities or interactions.

2. If a Level II PRTF is located on grounds shared by a Level I PRTF, the following shall apply:

a. The residents of the Level II PRTF and the Level I PRTF with which it shares grounds shall not have any joint activities or interactions, except for organized education activities, organized recreational activities, or group therapy for children with similar treatment needs;

b. Approval for therapeutic joint activities or interactions shall be documented in the resident's comprehensive treatment plan of care; and

c. The maximum age range for joint activities or interactions shall be no more than five (5) years for residents age six (6) to twenty-one (21), and no more than three (3) years for residents in Level II facilities age four (4) to five (5).

(b) Direct-care staff of the licensed facility with which the Level I or Level II PRTF shares grounds may provide relief, replacement, or substitute staff coverage to the PRTF; and

(c) For continuity of care, at least fifty (50) percent of direct care staff of the Level I or Level II PRTF shall be consistently and primarily assigned to the living unit.[~~employed by the PRTF.~~

~~(4) PRTFs that are located in the same structure or on a common campus may share joint activities and staff.~~]

Section 4.[~~3.~~] Licensure. (1) A Level I or Level II psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

(2) Pursuant to KRS 216B.455(3) and 216B.457(5) which require compliance with KRS 216B.105, no person shall operate a PRTF without first obtaining a license issued by the Office of Inspector General.

(3) Pursuant to KRS 216B.455(4) and 216B.457(6), a PRTF shall be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards.

Section 5.[~~4.~~] Governing Body for a Level I or Level II PRTF. A PRTF shall have a governing body with overall authority and responsibility for the facility's operation.

(1)(a) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(b) A Level I and a Level II PRTF that are part of the same multifacility system, and a Level II PRTF operated by a psychiatric hospital, may share the same governing body.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall describe the process for the following:

(a) Adopting policies and procedures;

(b) Providing sufficient funds, staff, equipment, supplies, and facilities to assure that the facility is capable of providing appropriate and adequate services to residents;

(c) Overseeing the system of financial management and accountability;

(d) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(e) Electing, appointing, or employing the clinical and administrative leadership personnel of the facility, and defining the qualifications, authority, responsibility, and function of those positions[~~; and~~

~~(f) Approving employment of mental health professional staff~~].

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) If a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 6.[~~5.~~] Level I or Level II PRTF Program Director. (1) A program director shall be responsible for the administrative management of the facility.

(2) A program director:

(a) Shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems;

(b) Shall have at least minimum qualifications of a master's degree or bachelor's degree in the human services field including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing; or
15. Other human service field related to working with families and children;

(c)1. With a master's degree shall have two (2) years of prior supervisory experience in a human services program; or

2. With a bachelor's degree shall have four (4) years of prior supervisory experience in a human services program; and

(d)1. Shall have three (3) professional references, two (2) personal references, and a criminal record check performed every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;[~~and~~]

2. Shall not have a crime conviction, or plea of guilty, pursuant to KRS 17.165 or a Class A felony; and

3. Shall be subject to the provisions of KRS 216B.457(12), which requires submission to a check of the central registry, and requires an employee to be removed from contact with a child under the conditions described in KRS 216B.457(12).

(3) A program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following, unless the PRTF is part of a health care system under common ownership and governance where such duties are assigned to, or are the responsibility of the program director's supervisor or other staff:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Assuring that sufficient, qualified, and appropriately supervised staff are on duty to meet the needs of the residents at all times;

(c) Approving purchases and payroll;

(d) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(e) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(f) Preparing reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(g) Maintaining a written manual that defines policies and procedures and is regularly revised and updated; and

(h) Assuring that all written facility policies, plans, and procedures are followed.

Section 7.[~~6.~~] Administration and Operation of a Level I or Level II PRTF. (1) A Level I or Level II PRTF shall have written documentation of the following:

(a) An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

(b) A service philosophy with clearly defined assumptions and values;

(c) Estimates of the clinical needs of the children and adolescents [~~in the area~~] served by the facility;

(d) The services provided by the facility in response to needs;

(e) The population served, including age groups and other relevant characteristics of the resident population;

(f) The intake or admission process, including how the initial contact is made with the resident and the family or significant others;

(g) The assessment and evaluation procedures provided by the facility;

(h) The methods used to deliver services to meet the identified clinical needs of the residents served;

(i) The methods used to deliver services to meet the basic

needs of residents in a manner as consistent with normal daily living as possible;

(j) The methods used to create a home-like environment for all residents;

(k) The methods, means and linkages by which the facility involves [~~all~~] residents in community activities, organizations, and events;

(l) The treatment planning process and the periodic review of therapy;

(m) The discharge and aftercare planning processes;

(n) The facility's therapeutic programs;

(o) How professional services are provided by qualified, experienced personnel;

(p) How mental health professionals in Level I facilities and qualified mental health professionals in Level II facilities and direct-care staff in Level I or Level II facilities who have been assigned specific treatment responsibilities are qualified by training or experience and have demonstrated competence and[~~have appropriate clinical privileges~~]; or are supervised by a mental health professional or qualified mental health professional who is qualified by experience to supervise the treatment;

(q) How the facility is linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Community Based Services offices and facilities, [~~and~~] school systems in the facility's service area, and any other agency, organization, or facility deemed appropriate by the cabinet;

(r) The means by which the facility provides, or makes arrangements for the provision of:

1. Emergency services and crisis stabilization;

2. Discharge and aftercare planning that promotes continuity of care; and

3. Education and vocational services; and

(s) Services the facility provides to improve stability of care and reduce re-hospitalization including:

1. How psychiatric and nursing coverage is provided to assure the continuous ability to manage and administer medications in crisis situations except for those that may only be administered by a physician; and

2. How direct-care staffing with supervision is provided to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint, and the staff training necessary to implement them.

(2) The documentation shall be:

(a) Made available to each mental health professional in a Level I PRTF or qualified mental health professional in a Level II PRTF and to the program director; and

(b) Reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(3) Professional staff for a Level I or Level II PRTF.

(a) A Level I PRTF shall:

1. Employ a sufficient number of mental health professionals in a Level I PRTF to meet the treatment needs of residents and the goals and objectives of the facility; and

2. Meet the following requirements with regard to professional staffing:

a.(i) A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed or contracted to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation.

(ii) If a facility has residents ages twelve (12) and under, the licensed psychiatrist shall be board-eligible or board-certified in child psychiatry.

(iii) The psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly, which includes meeting with each resident at least one (1) time each week.

b. A Level I PRTF shall employ at least one (1) full-time mental health professional.

c. A mental health professional in a Level I PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times.

d. A psychiatrist shall be available on at least an on-call basis at all times.

(b) A Level II PRTF shall:

1. Employ or contract with a sufficient number of qualified mental health professionals in a Level II PRTF to meet the treatment needs of residents and the goals and objectives of the facility;

2. Ensure that at least one (1) qualified mental health professional in a Level II PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times; and

3. Meet the following requirements with regard to professional staff pursuant to KRS 216B.457(9):

a. A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;

b. If a Level II facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist;

c. The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly, which includes meeting with each resident at least one (1) time each week; and

d. A licensed psychiatrist shall be available on at least an on-call basis at all times.

(c) Clinical director. The administration of the facility[~~governing body~~] shall designate one (1) full-time:

1. Mental health professional as clinical director for a Level I[~~the~~] PRTF; or

2. Qualified mental health professional as the clinical director for a Level II PRTF.

a.[~~1.~~] In addition to the requirements related to his or her profession, the clinical director shall have at least two (2) years of clinical experience in a mental health setting that serves children or adolescents with emotional problems.

b.[~~2.~~] The administration of the facility[~~governing body~~] shall define the authority and duties of the clinical director.

c.[~~3.~~] An individual may serve as both the clinical director and the program director if the qualifications of both positions are met.

d.[~~4.~~] The clinical director shall be responsible for:

(i)[~~a.~~] The maintenance of the facility's therapeutic milieu; and

(ii)[~~b.~~] Assuring that treatment plans developed in accordance with Section 12[~~11~~](3) of this administrative regulation are implemented.

e.(i)[~~5.~~] A full-time mental health professional may be designated as clinical director for more than one (1) Level I PRTF if the Level I PRTFs are located on a common campus.

(ii) A full-time qualified mental health professional may be designated as clinical director of a PRTF operating both a Level I and a Level II PRTF located on a common campus.

(4) Direct-care staff for a Level I PRTF.

(a) A Level I PRTF shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b)1. Level I Direct-care staff shall have at least a high school diploma or equivalency; and

2. Complete[~~two (2) years experience in a program in the mental health field serving children or adolescents.~~

~~2. Completion of~~] a forty (40) hour training curriculum meeting the requirements of subsection (6)[~~(5)~~](d) of this section within one (1) month of employment[~~may be substituted for experience, except that direct-care staff so qualified shall not be given clinical privileges in their first year of employment~~].

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan for a Level I PRTF shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for a PRTF at all times during normal waking hours when residents are not in school;

2. At least one (1) direct-care staff member shall be assigned

to direct-care responsibilities for each three (3) residents during normal waking hours when residents are not in school;

3.a. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep; and

b. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on the grounds of the PRTF to assist with emergencies or problems which might arise;

4. If a mental health professional is directly involved in an activity with a group of residents, he or she may meet the requirement for a direct-care staff member; and

5. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) Written policies and procedures approved by the Level I PRTF's governing body shall:

1.[~~Specify the clinical privileges, if any, of each member of the direct-care staff;~~

~~2.~~] Provide for the supervision of the direct-care staff; and

2.[~~3.~~] Describe the responsibilities of direct-care staff in relation to professional staff.

(5) Direct-care staff for a Level II PRTF.

(a) A Level II PRTF shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Level II direct-care staff shall:

1. Have at least a high school diploma; and

2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(d) of this section within one (1) month of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, a Level II PRTF shall prepare a written staffing plan pursuant to KRS 216B.457(10)(a) that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria.

(d) Pursuant to KRS 216B.457(10)(a), the written staffing plan submitted by a Level II PRTF to the Office of Inspector General shall include the following:

1. Specification of the direct care staffing per resident ratio that the facility shall adhere to during waking hours and during sleeping hours;

2. Delineation of the number of direct care staff per resident, including the types of staff and the mix and qualifications of qualified mental health professionals and qualified mental health personnel, that shall provide direct care and will comprise the facility's per patient staffing ratio;

3. Specification of appropriate qualifications for individuals included in the per resident staffing ratio by job description, education, training, and experience;

4. Provision for ensuring compliance with the written staffing plan, and specification of the circumstances under which the facility may deviate from the per resident staffing ratio due to patient emergencies, changes in patient acuity, or changes in resident census; and

5. Submission of the written staffing plan to the Office of Inspector General for approval as part of the facility's application for initial licensure.

(e)1. Pursuant to KRS 216B.457(10)(a), a Level II PRTF shall comply with its cabinet-approved written staffing plan.

2. If the facility desires to change its approved per patient staffing ratio, it shall submit a revised plan to the Office of Inspector General and have the plan approved prior to implementation of the change.

(6) Staff development.

(a) Level I and Level II PRTF staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.

(b) Level I and Level II PRTF[~~full-time~~] professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with forty (40) hours per year of in-service training

(c)[~~Part-time staff shall have at least twenty-four (24) hours of annual training specific to tasks to be performed.~~

~~(d)~~] Each Level I and Level II PRTF staff member working directly with residents shall receive annual training in the following areas:

1. Child and adolescent growth and development;

2. Emergency and safety procedures;

3. Behavior management, including de-escalation training;[~~and~~]

4. Detection and reporting of child abuse or neglect.

5. Physical management procedures and techniques;

6. First aid;

7. Cardiopulmonary resuscitation;

8. Infection control procedures; and

9. Training specific to the specialized nature of the facility.

(6) Employment practices in a Level I and Level II PRTF.

(a) A Level I and Level II PRTF shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The Level I or Level II PRTF's personnel policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The Level I or Level II PRTF's personnel policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The Level I or Level II PRTF shall maintain job descriptions that:

1. Specify[~~Are approved by the governing body for all positions specifying~~] the qualifications, duties, and supervisory relationship of the position;

2. Accurately reflect the actual job situation; and

3. Are revised if a change is made in the required qualifications, duties, supervision, or any other major job-related factor.[~~; and~~

~~4. Provide the salary range for each position.~~]

(e) The Level I or Level II PRTF shall provide a personnel orientation to all new employees.

(f)1. The Level I or Level II PRTF's personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.

2. The Level I or Level II PRTF's facility administration[~~governing body~~] shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.

(g)[~~b. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.~~

~~2.a. Provide a personnel orientation to all new employees.~~

~~b. The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.~~

~~c. The governing body shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.~~

~~(g) Information on the following shall be included in the personnel policies and procedures:~~

~~1. Employee benefits;~~

~~2. Recruitment;~~

~~3. Promotion;~~

~~4. Training and staff development;~~

~~5. Employee grievances;~~

~~6. Safety and employee injuries;~~

~~7. Relationships with employee organizations;~~

~~8. Disciplinary systems;~~

~~9. Suspension and termination mechanisms;~~

~~10. Rules of conduct;~~

~~11. Lines of authority;~~

~~12. Performance appraisals;~~

~~13. Wages, hours and salary administration; and~~

~~14. Equal employment opportunity and, if required, affirmative action policies.~~

~~(h)~~] The Level I or Level II PRTF's personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h)1.[~~(i)~~] The Level I or Level II PRTF's personnel policies and procedures shall require a criminal record check through the Administrative Office of the Courts or the Kentucky State Police for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

2. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer in a Level I or Level II PRTF.

3. Pursuant to KRS 216B.216.457(12)(a), any employee or volunteer in a Level I or Level II PRTF who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.

4. Pursuant to KRS 216B.457(12)(b), an employee or volunteer in a Level I or Level II PRTF under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.

5. Pursuant to KRS 216B.457(12)(c), the employee or volunteer in a Level I or Level II PRTF shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.

6. Pursuant to KRS 216B.457(12)(d), each employee or volunteer in a Level I or Level II PRTF shall submit to a check of the central registry established under 922 KAR 1:470.

7. A Level I or Level II PRTF shall not employ or allow any person to volunteer if that individual is listed on the central registry.

8. Pursuant to KRS 216B.457(12)(e), any employee or volunteer removed from contact with a child, may be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.

(i)[~~(j)~~] The Level I or Level II PRTF's personnel policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j)[~~(k)~~] A Level I or Level II PRTF's personnel record shall be kept on each staff member and shall contain the following items:

1. Name and address[~~Application for employment~~];

2. [~~Written references and a record of verbal references;~~

~~3.~~]Verification of all training and experience and of licensure, certification, registration, or renewals;

3. Verification of submission to the background checks required by paragraph (h) of this subsection;

4.[~~Wage and salary information, including all adjustments;~~

~~5.~~] Performance appraisals;

5.[~~6. Counseling actions;~~

~~7. Disciplinary actions;~~

~~8. Commendations;~~

~~9.~~] Employee incident reports; and

6.[~~10.~~] Record of health exams related to employment, including compliance with the tuberculosis testing requirements of Section 24 of this administrative regulation.

(k)[~~(l)~~] The Level I or Level II PRTF's personnel policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l)[~~(m)~~] Performance appraisals shall relate job description and job performance and shall be written.[~~The criteria used to evaluate job performance shall be objective.~~]

Section 8.[~~7.~~] Resident Rights. (1) A Level I or Level II PRTF shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the Level I or Level II PRTF's governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, a Level or Level II PRTF shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's right to access treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's right to participate in planning for treatment;

(f) The nature of care, procedures, and treatment that the resident shall receive;

(g) The right to informed consent related to the risks, side effects, and benefits of all medications and treatment procedures used; [~~and~~]

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice; and

(i) The right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

(4) The rights of residents in a Level I or Level II PRTF shall be written in language which is understandable to the resident, his or her parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning Level I or Level II PRTF resident rights shall assure and protect the resident's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy are limited, the resident and his or her parent, guardian, or custodian shall receive a full explanation from the Level I or Level II PRTF. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure anonymously and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the Level I or Level II PRTF's governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his or her parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, videotapes, monitors, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his or her record maintained by the Level I or Level II facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10)(a) A Level I or Level II resident shall be allowed to work for the facility only under the following conditions:

1. The work is part of the individual treatment plan;

2. The work is performed voluntarily;

3. The patient receives wages commensurate with the economic value of the work; and

4. The work project complies with applicable law and administrative regulation; and

(b) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) A Level I or Level II PRTF's Written policy developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) A Level I or Level II PRTF shall prohibit all cruel and unusual disciplinary measures including the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding, or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit Level I or Level II PRTF residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14)(a) Written rules of Level I or Level II PRTF resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body.

(b) Residents shall participate in the development of the rules to a reasonable and appropriate extent.

(c) These rules shall be based on generally acceptable behavior for the resident population served.

(15) The application of disciplinary measures in a Level I or Level II PRTF shall relate to the violation of established rules.

Section 9.[~~8.~~] Resident Records. (1) A Level I or Level II PRTF shall:

(a) Have written policies concerning resident records approved by the governing body; and

(b) Maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(2) The Level I or Level II PRTF resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his or her family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, if applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning;[~~and~~]

5. Immunization status; and

6. Tuberculosis testing required by Sections 19 and 20 of this administrative regulation.

(3) The Level I or Level II PRTF resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except if the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the:

1. Mental health professional who provided the service in a Level I PRTF; or

2. Qualified mental health professional who provided the service in a Level II PRTF.

(c)1. Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the resident.

2. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly.

3. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(4) A Level I or Level II PRTF shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 10.[~~9.~~] Quality Assurance. (1) A Level I or Level II PRTF shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) A Level I or Level II PRTF shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings.

(3) A Level I or Level II PRTF shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record shall[~~should~~] be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 11.[~~10.~~] Admission Criteria. (1) A Level I or Level II PRTF shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission in a Level I or Level II

PRTF;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his or her parents, guardians, custodians, or the placing agency.

(3) Pursuant to 42 C.F.R. 483.356, at admission, a facility shall:

(a) Inform both the incoming resident and the resident's parent or legal guardian of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;

(b) Communicate its restraint and seclusion policy in a language that the resident, or his or her parent or legal guardian understands (including American Sign Language, if appropriate) and if necessary, the facility shall provide interpreters or translators;

(c) Obtain an acknowledgment, in writing, from the resident's parent or legal guardian that he or she has been informed of the facility's policy on the use of restraint or seclusion during an emergency safety situation. Staff shall file this acknowledgment in the resident's record; and

(d) Provide a copy of the facility policy to the resident's parent or legal guardian. The facility's policy shall provide contact information, including the phone number and mailing address for Kentucky Protection and Advocacy.

(4) Age limits.

[~~(3)~~](a) Residents admitted to a Level I PRTF shall have obtained age six (6), but not attained age eighteen (18).

(b) Residents in a Level I PRTF may remain in care until age twenty-one (21) if admitted by their 18th birthday.

(c) Pursuant to KRS 216B.450(5)(b), a Level II PRTF may provide inpatient psychiatric residential treatment and habilitation to persons who are age four (4) to twenty-one (21) years.

(d)1. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit for residents six (6) years of age and older.

2. If a Level II PRTF admits residents who are four (4) or five (5) years of age, the age range shall not be more than three (3) years in the living unit.

(5)[~~(4)~~] Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted to a Level I PRTF.

(6)(a) Except for paragraph (b) of this subsection, a Level II PRTF shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services pursuant to KRS 216B.457(2).

(b) A Level II PRTF shall refuse to admit a patient if the admission exceeds the facility's licensed bed capacity.

Section 12[~~11.~~] Resident Management. (1) Intake.

(a) A Level I and Level II PRTF shall have written policies and procedures approved by the facility administration[~~governing body~~] for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(c) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes at least physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) An initial health screening for illness, injury, and communicable disease or other immediate needs shall be conducted within twenty-four (24) hours after admission by a nurse.

(c) A physician, nurse practitioner, or physician's assistant shall conduct a physical examination of each resident within fourteen (14) days after admission. Communication to schedule the physical examination of each resident shall be initiated within twenty-four (24) hours after admission. The physical examination shall include at least evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(d) If the resident has had a complete physical examination by a qualified physician, nurse practitioner, or physician's assistant within the previous three (3) months which includes the requirements of paragraph (c) of this subsection of this section and if the facility obtains complete copies of the record, the physician, nurse practitioner, or physician's assistant may determine after reviewing the records and assessing the resident's physical health that a complete physical examination is not required. If that determination is made, the examination performed in the previous three (3) months may be used to meet the requirement for a physical examination in paragraph (c) of this section.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. If indicated, psychological assessments, including intellectual, projective, and personality testing;

5. If indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age fourteen (14)[~~sixteen (16)~~] and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with an attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) If appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Level I treatment plans.

(a)1. Within seventy-two (72) hours following admission, a mental health professional shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status.

2. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A comprehensive[~~master~~] treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156 within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan of care shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan of care shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan of care shall specify criteria to be met for termination of treatment.

4. The treatment plan of care shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his or her treatment plan of care, and the participation shall be documented in the resident's record.

6.a. A specific plan for involving the resident's family or significant others shall be included in the treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive[~~master~~] treatment plan.

c. The comprehensive[~~master~~] treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

7. The treatment plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least within, thirty (30) days following the first ten (10) days of treatment and every thirty (30)[~~sixty (60)~~] days thereafter.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The comprehensive[~~master~~] treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(4) Level II PRTF treatment plans.

(a)1. Pursuant to KRS 216B.457(13), a Level II PRTF shall develop and implement an initial treatment plan of care for each resident.

2. The initial plan of care shall be:

a. Based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services; and

b. Completed within seventy-two (72) hours of admission.

(b) Appropriate therapeutic efforts shall begin before a comprehensive treatment plan of care is finalized.

(c)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156.

2. Pursuant to KRS 216B.457(14), the comprehensive treatment plan of care shall be:

a. Based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services; and

b. Completed within ten (10) calendar days of admission.

3. The comprehensive treatment plan of care shall contain specific and measurable goals for the resident to achieve.

4. The comprehensive treatment plan of care shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

5. The resident shall participate to the maximum extent feasible in the development of his or her treatment plan of care, and the participation shall be documented in the resident's record.

6.a. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan.

c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

(d) Pursuant to KRS 216B.457(15), the comprehensive treatment plan of care shall be reviewed at least every thirty (30) days following the first ten (10) days of treatment and shall include the following documentation:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian or conservator;

2. An assessment of progress toward each treatment goal and objective with revisions as indicated; and

3. A statement of justification for the level of services needed, including suitability for treatment in a less-restrictive environment and continued services.

(5) Level I and Level II PRTF progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for

residents receiving services from outside sources and, if available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his or her treatment plan shall be regularly recorded in the resident record.

(6)[~~(5)~~] Discharge planning. A Level I and Level II PRTF shall have written policies and procedures for discharge of residents.

(a)1. Discharge planning shall begin at admission and be documented in the resident's record.

2. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan.

3. This plan shall be maintained in the resident's record and reviewed and updated with the comprehensive[~~master~~] treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for any aftercare service, and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A Level I facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency copies of the resident's records and discharge summary; and

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that the placement reasonably meets the needs of the resident.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

Section 13.[~~12.~~] Services. A Level I and Level II PRTF shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident. Services shall include the opportunity for the resident to participate in community activities, organizations and events and shall provide a normalized environment for the resident.

(1) Level I and Level II mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 12[~~11~~] of this administrative regulation.

(b) The mental health services available through the Level I or Level II PRTF shall include the services listed below. These mental health services shall be provided by staff of the Level I or Level II PRTF:

1. a. Case coordination services to assure the full integration of all services provided to each resident.

b. Case coordination activities shall include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2.a. Planned on-site[~~verbal~~] therapies including[~~formal~~] individual, family, and group therapies as indicated by the comprehensive treatment plan.

b. These therapies shall include psychotherapy, interventions, or[~~and other~~] face-to-face[~~verbal~~] contacts, which may be made verbally or using assistive communication, between staff and the resident[~~which are planned~~] to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit.

c.[~~Verbal~~] Contacts that are incidental to other activities are excluded from this service.

3.a. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself or herself, and to function effectively in community settings.

b. Task and skill training activities shall include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Level I and Level II physical health services.

(a) The physical health services available through the Level I or Level II PRTF facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 12[~~11~~] of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education; and

6. An ongoing immunization program.

(b) If physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(c) A Level I or Level II PRTF shall not admit a resident who has a communicable disease or acute illness requiring treatment in an acute care inpatient setting

(3) Level I and Level II dietary services.

(a) A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Level I and Level II emergency services.

(a) A Level I or Level II PRTF shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, emergency safety intervention, elopement, or death.

(b)[~~The facility shall provide or arrange for the training of all direct care and professional staff in first aid and CPR.~~

~~(c)~~]1. All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

2. The plan shall be posted.

3. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building.

4. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff if a psychiatric, medical, or dental emergency of a resident occurs that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Level I and Level II pharmacy services. A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a)1. Medications shall be administered by a registered nurse, physician, or dentist, except if administered by a licensed practical nurse, certified medication aide, or direct care staff under the supervision of a registered nurse.

2. Direct care staff who administer medications shall have successfully completed a medicine administration course approved by the Kentucky Board of Nursing;

(b) Medications shall not be given without a written order signed by a physician, or dentist if applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [~~or~~] therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized by KRS 311.858. Telephone orders for medications shall be given only to licensed nurses or a pharmacist and signed by a[~~the~~] physician, dentist, advanced registered nurse practitioner,[~~or~~] therapeutically-certified optometrist, or physician assistant within seventy-two (72)[~~twenty-four (24)~~] hours from the time the order is given;

(c)[~~Psychotropic~~] Medications shall be prescribed only when clinically indicated[~~as one (1) facet of a program of therapy~~]. The facility shall ensure that no[~~stimulant or psychotropic~~] medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs shall be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Level I and Level II education and vocational services.

(a) Educational and vocational services available through a PRTF shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided by:

a. The facility;

b. The local school district in which the facility is located; or

c. A nonpublic school program which is specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program shall be specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. Education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the PRTF. If Level II facility beds are located in a separate part of a psychiatric or acute care hospital, the Level II residents shall not be educated in the same classroom as children or youth who are patients of the hospital.

(b) If the education services are not provided directly by the facility, there shall be a written plan for the provision of education services. The education provider shall be a state education department-approved program. The written plan shall, at a minimum, address:

1. Qualifications of staff providing educational services;

2. Participation of educational and vocational staff in the plan for the provision of education services[~~treatment planning process~~];

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's comprehensive[~~master~~] treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(e) The facility shall ensure that education services are devel-

oped and implemented with input from the child's education staff in conjunction with the comprehensive[~~master~~] treatment plan and meet the following requirements:

1. Each resident's comprehensive[~~master~~] treatment plan shall include formal academic goals for remediation and continuing education.

2.a. Each resident with a disability who is eligible for special education services[~~to the handicapped~~] shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized education[~~treatment~~] plan developed by the local school district.

b. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate.

c. The program director or designee shall request an invitation to attend all individualized education[~~treatment~~] plan or Admission and Release Committee meetings.

d. If allowed, the program director or designee shall attend all individualized education[~~treatment~~] plan or Admission and Release Committee meetings.

3. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 U.S.C. 1400 shall be developed with the opportunity for input from both parties.

(f)1. The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan.

2. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Level I or Level II PRTF activity services.

(a) A daily schedule of planned recreational activities shall be prepared for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities which may include[~~including~~] physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community if appropriate; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(c) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. A Level I or Level II PRTF shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 14. Use of Emergency Safety Interventions in a Level I or Level II PRTF. (1) Pursuant to 42 C.F.R. 483.356(a)(3), restraint or seclusion shall not result in harm or injury to the resident and shall be used only:

(a) To ensure the safety of the resident or others during an emergency safety situation; and

(b) Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.

[~~13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself, herself, or others.~~]

(2)(a) The use of mechanical restraint shall be prohibited in a Level I or Level II PRTF.

(b) Residents of a Level I or Level II PRTF shall not be held in a prone or supine position during restraint.

(3) Emergency safety interventions[~~Special treatment procedures~~] shall not be used as a means of coercion, punishment,[~~or as a~~] convenience, or retaliation[~~of staff~~].

(4) Orders for restraint or seclusion shall be:

(a) By a physician or other licensed practitioner [~~Special treatment procedures may only be:~~

~~(a) Ordered by a trained, clinically privileged staff person~~] acting within his or her scope of practice who is trained in the use of emergency safety interventions; [~~and~~]

(b) Carried out by trained staff;

(c) If the residents' treatment team physician is available, only he or she shall order restraint or seclusion; and

(d) A physician or other licensed practitioner acting within his or her scope of practice who is trained in the use of emergency safety interventions shall order the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff.

(5) A Level I and Level II PRTF shall have a written plan approved by the governing body for the use of emergency safety intervention[~~special treatment procedures~~] which at a minimum shall meet the following requirements:

(a) Any use of an emergency safety interventions[~~special treatment procedures~~] shall require clinical justification;

(b) A rationale and the clinical indications for the use of an emergency safety intervention[~~special treatment procedures~~] shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective;

(d) The plan shall specify the length of time the emergency safety intervention[~~special treatment procedure~~] may be utilized; and

(e) The plan shall specify when continued or repeated emergency safety interventions[~~special treatment procedures~~] shall trigger multidisciplinary team review.

(6) If an emergency safety situation requires restraint or seclusion and a practitioner authorized to order restraint or seclusion is not available in a Level I or Level II PRTF, a verbal order for restraint and seclusion may be obtained and carried out under the following conditions:

(a) The verbal order shall be given by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice and trained in the use of emergency safety interventions;

(b) The verbal order shall be received by a registered nurse or licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice;

(c) The physician or ordering practitioner shall be immediately available, at least by telephone for consultation during the time that restraint or seclusion is being carried out; and

(d) The verbal order shall be countersigned by the physician or ordering practitioner within seven (7) days of date that the order was given, and included in the resident's record.

(7)[~~For a nonemergency situation, restraint or seclusion may be carried out only after being ordered by:~~

~~(a) A resident's treating physician; or~~

~~(b) A practitioner acting within his or her scope of practice, if the resident's treating physician is not available. The practitioner shall:~~

~~1. Contact the resident's treating physician as soon as possible and inform him or her of the order for restraint or seclusion; and~~

~~2. Annotate the resident's record with date and time of the contact with the treating physician.~~

~~(8)~~] An order for restraint or seclusion shall not exceed:

(a) The duration of the emergency safety situation;

(b) Four (4) hours for a resident eighteen (18) to twenty-one (21) years of age;

(c) Two (2) hours for a resident nine (9) to seventeen (17) years of age; or

(d) One (1) hour for a resident seven (7) to eight (8)[~~under nine (9)~~] years of age; or

(e) Thirty (30) minutes for a child four (4) to six (6) years of age.

(8)[~~(9)~~] If an emergency safety situation exists beyond the time limit for the use of restraint or seclusion, a new order for restraint or seclusion shall be obtained.

(9)[~~(10)~~] A resident that is placed in restraint or seclusion shall receive a face-to-face evaluation to determine physical and psychological well being. The evaluation shall[~~be conducted~~]:

(a) Be conducted by a licensed practitioner who is acting within his or her scope of practice and trained in the use of emergency safety intervention;

(b) Include the resident's physical and psychological status, resident's behavior, appropriateness of the intervention measures, and any complications resulting from the intervention[~~authorized by the facility and acting within his or her scope of practice~~]; and

(c) Be conducted[~~(b)~~] Within one (1) hour of restraint or seclusion being initiated.

(11) Each order for restraint or seclusion shall include:

(a) The name of the ordering physician or other licensed practitioner, acting within his or her scope of practice and trained in the use of emergency safety interventions;

(b) The date and time the order was obtained; and

(c) The emergency safety intervention ordered, including the length of time for which the physician or other licensed practitioner authorized its use.

(12)(a) Staff shall document the emergency safety intervention in the resident's record.

(b) The documentation shall be completed by the end of the shift in which the intervention occurs.

(c)If the intervention does not end during the shift in which it began, documentation shall be completed during the shift in which it ends. Documentation shall include:

1. Each order for restraint or seclusion as described in subsection (11) of this section;

2. The time the emergency safety intervention actually began and ended;

3. The time and results of the evaluation required by subsection (9) of this section;

4. The emergency safety situation that required the resident to be restrained or put in seclusion; or

5. The name of staff involved in the emergency safety intervention.

(13)[~~(11)~~] Staff who implement emergency safety interventions[~~special treatment~~] procedures shall:

(a) Have documented training in the proper use of the procedure used;

(b) Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and

(c) Receive annual training and recertification in crisis intervention and behavior management.

(14)[~~(12)~~] Staff authorized by a Level I or Level II PRTF shall:

(a) Be constantly, physically present with a resident being restrained;

(b) Monitor the physical and psychological well being of a resident being restrained, and monitor the safe use of restraint throughout the duration of the emergency safety intervention; and

(c) Document observations of, and actions taken for, a resident being restrained.

(15) Immediately after an incident of restraint or seclusion[~~(13) After a restraint is removed from a resident~~], a physician or licensed practitioner[~~that is authorized by a PRTF and~~] acting within his or her scope of practice and trained in the use of emergency safety interventions shall conduct a face-to-face evaluation of the resident's physical and psychological well-being.

(16)[~~(14)~~] Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

(17)[~~(15)~~] Staff authorized by a Level I or Level II PRTF shall:

(a) Monitor the physical and psychological well being of the resident;

(b) Ensure that a resident in seclusion is provided:

1. Regular meals;

2. Hydration;

3. Bathing; and

4. Use of the toilet; and

(c) Document observations of, and actions taken for, a resident in restraint every fifteen (15) minutes.

(18)[~~(16)~~] A procedure shall not be used at any time in a manner that causes undue physical discomfort, harm, or pain to a resident.

(19)(a) A Level I or Level II PRTF shall notify the parent, guardian, or custodian of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.

(b) The facility shall document in the resident's record that the parent, guardian, or custodian has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

(20)(a) Within twenty-four (24) hours after use of restraint or seclusion, staff involved in an emergency safety intervention and the resident shall have a face-to-face discussion.

(b) The discussion shall include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the resident. The discussion may include other staff and the resident's parent, guardian, or custodian.

(21) Within twenty-four (24) hours after the use of restraint or seclusion, all staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes a review and discussion of:

(a) The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;

(b) Alternative techniques that might have prevented the use of the restraint or seclusion;

(c) The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and

(d) The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.

(22)[~~(17)~~] A Level I or Level II PRTF shall not use extraordinary risk procedures, including[~~, but not limited to,~~] experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(23)[~~(18)~~] Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by the child's psychiatrist addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

(24)[~~(19)~~] The clinical director or designee shall review all uses of emergency safety interventions[~~special treatment procedures~~] on a daily basis. The daily review shall include an evaluation for the possibility of unusual or unwarranted patterns of use.

Section 15.[~~14.~~] Housekeeping Services. (1) A Level I and Level II PRTF shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by a Level I or Level II PRTF or through contractual agreement.

(3) Pest control shall be provided by a Level I or Level II PRTF or through contractual agreement.

Section 16.[~~15.~~] Infection Control. (1) Because infections acquired in a Level I or Level II PRTF or brought into a Level I or Level II PRTF from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) A Level I or Level II PRTF shall document that in-service education in infection prevention and control is provided to all services and program components.

Section 18. Admission of Residents under Treatment for Pulmonary Tuberculosis Disease. (1) A Level I or Level II PRTF shall not admit a person under medical treatment for pulmonary tuberculosis disease unless the person is declared noninfectious by a licensed physician in conjunction with the local or state health department.

(2) Documentation of noninfectious status shall include:

(a) Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

(b) Documentation of clinical improvement on therapy;

(c) Three (3) consecutive sputum smears negative for acid-fast bacilli within the one (1) month period prior to admission; or

(d) Three (3) negative sputum cultures for TB.

Section 19. Tuberculin Skin Tests or BAMTs of Residents. (1) For residents entering a facility, a TST or BAMT shall not be required if one (1) of the following is documented:

(a) A previously documented TST has shown ten (10) or more millimeters of induration;

(b) A previously documented TST has shown five (5) or more millimeters of induration for a resident who has medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) The resident is currently receiving or has completed treatment of LTBI with nine (9) months of ionized or four (4) months of rifampin, or has completed a course of multiple-drug therapy for active TB disease; or

(e) The resident can document that he or she has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at a medical facility.

(2)(a) If a resident does not meet the criteria of subsection (1) of this section, a TST or a BAMT shall be required upon admission to the Level I or Level II facility.

(b)1. A TST is preferred for residents less than five (5) years of age.

2. A TST result of five (5) or more millimeters of induration may be positive for those residents who have medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive.

3. For a resident without medical reasons as identified in paragraph 2. of this subsection whose initial TST shows less than ten (10) millimeters of induration, two-step TSTs shall be required for:

a. A resident age fourteen (14) years and older; or

b. A resident expected to stay longer than twelve (12) months unless the resident is able to document that he or she has had a TST within one (1) year prior to initial testing upon admission to the facility.

(3)(a) The TST result of each resident shall be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record.

(b) The medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "TST Positive" for each resident with a reaction of ten (10) or more millimeters of induration and for each resident with a reaction of five (5) or more millimeters of induration who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive.

(4)(a) If performed and the result is positive or negative, only one (1) BAMT result shall be required on admission.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(c) If a resident has a positive BAMT, the medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "BAMT Positive."

Section 20. Medical Evaluations and Chest X-rays of Residents. (1) A resident shall receive a medical evaluation, including an HIV test, if the resident is found at the time of admission to have a:

(a) TST of ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive; or

(c) Positive BAMT.

(d) A chest x-ray shall be performed unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease.

(2)(a) A residents with no clinical evidence of active TB disease upon evaluation by a licensed physician and a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A resident who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements in Section 21 of this administrative regulation.

(3) A resident with an abnormal chest x-ray, consistent with TB disease:

(a) Shall be evaluated for active tuberculosis disease; and

(b) If the resident is diagnosed with active tuberculosis disease, transferred to a facility with an airborne infection isolation (AII) room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 21. Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, or chest pain, if the resident has a:

(a) TST result with ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion.

(2) If pulmonary symptoms, including cough, sputum production, or chest pain, develop and persist for three (3) weeks or longer, the resident shall have a medical evaluation, a chest x-ray shall be taken, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health,

Frankfort, Kentucky, for tuberculosis culture and smear.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an AII room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 22. Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents Longer than One (1) Year. (1) Annual testing shall be required on or before the anniversary of the resident's last TST or BAMT.

(2) A TST shall be preferred for residents aged less than five (5) years.

(3) If pulmonary symptoms develop and persist for three (3) weeks or more:

(a) The resident shall have a medical evaluation;

(b) The tuberculin skin test shall be repeated; and

(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear; and

(d) A chest x-ray shall be taken.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an AII room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 23. Tuberculin Skin Tests or BAMTs for Staff. (1) The TST or BAMT status of all PRTF facility staff members who have direct contact with residents shall be documented in the employee's health record.

(2) A TST or BAMT shall be initiated on each new staff member who has direct contact with residents before or during the first week of employment, and the results shall be documented in the employee's health record within the first month of employment.

(3) A TST or BAMT shall not be required at the time of initial employment if the employee documents one of the following:

(a) A prior TST of ten (10) or more millimeters of induration;

(b) A prior TST of five (5) or more millimeters of induration if the employee has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion; or

(f) The employee is currently receiving or has completed treatment for LTBI.

(4)(a) If performed and the result is positive or negative, one (1) BAMT test result shall be required on initial employment.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(5) A TST result of five (5) or more millimeters of induration may be positive for a new employee who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive.

(6) A two-step TST shall be required for a new employee who does not have a medical reason as described in subsection (5) of this section and whose initial TST shows less than ten (10) millimeters of induration, unless the individual documents that he or she has had a TST within one (1) year prior to his or her current employment.

(e) A staff member who has never had a TST of ten (10) or more millimeters induration or a positive BAMT shall have a TST or BAMT annually on or before the anniversary of his or her last TST or BAMT.

Section 24. Medical Evaluations and Chest X-rays and Monitoring of Staff with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a staff member who has direct contact with residents shall have a medical evaluation, including a HIV test, if the staff member is found to have a:

(a) TST of ten (10) or more millimeters induration

(b) TST result of five (5) or more millimeters of induration if the staff member has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion,.

(f) A chest x-ray shall be performed unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis disease.

(2)(a) A staff member with a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A staff member who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements in Section 27 of this administrative regulation.

(3)(a) A staff member with an abnormal chest x-ray shall be evaluated for active tuberculosis disease, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(b) A staff member shall remain off work until cleared as being noninfectious for TB by a licensed physician.

(c) A staff member whose medical evaluation and laboratory tests are suspect for active tuberculosis disease shall be isolated (e.g. in an AII room or in home isolation) and started on four (4) drug antituberculosis treatment that is administered by DOT.

(4)(a) A staff member under treatment for pulmonary tuberculosis disease may return to work in the facility after being declared noninfectious by a licensed physician in conjunction with the local or state health department.

(b) Documentation of noninfectious status shall include:

1. Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

2. Documentation of clinical improvement on therapy;

3. Three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to admission; or

4. Three (3) negative sputum cultures for TB.

Section 25. Responsibility for Screening and Monitoring Requirements. (1) The administrator of the facility shall be responsible for ensuring that all TSTs, BAMTs, chest x-rays and sputum samples submissions are done in accordance with Sections 18 through 27 of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from the local health department.

(3)(a) Dates of all TSTs or BAMTs and results, all chest x-ray reports and all sputum sample culture and smear results for residents shall be recorded as a permanent part of the resident's medical record and be summarized on the individual's transfer form when an interfacility transfer occurs.

(b) The TST or BAMT status of all staff members and any TB related chest x-ray reports shall be documented in the employee's health record.

Section 26. Reporting to Local Health Departments. (1) The following shall be reported to the local health department having jurisdiction by the administrator of the facility immediately upon becoming known:

(a) All residents and staff who have a TST of ten (10) millimeters or more induration;

(b) A TST result of five (5) or more millimeters of induration for all residents or staff who have medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for their TST result to be interpreted as positive;

(c) A positive BAMT at the time of admission of a resident or employment of a staff member who has direct contact with residents;

(d) TST conversions or BAMT conversions on serial testing or identified in a contact investigation;

(e) Chest x-rays which are suspicious for TB disease;

(f) Sputum smears positive for acid-fast bacilli;

(g) Sputum cultures positive for Mycobacterium tuberculosis; or

(h) The initiation of multi-drug antituberculosis treatment.

Section 27. Treatment for LTBI. (1) A resident or staff member with a TST conversion or a BAMT conversion shall be considered

to be recently infected with Mycobacterium tuberculosis.

(2) Recently infected persons shall have a medical evaluation, HIV test, and a chest x-ray.

(3)(a) Individuals who have no signs or symptoms of tuberculosis disease by medical evaluation or chest x-ray shall be offered treatment for LTBI with isoniazid for nine (9) months or rifampin for four (4) months, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician.

(b) Medications shall be administered to residents upon the written order of a physician and shall be given by DOPT.

(4)(a) If a resident or staff member refuses treatment for LTBI or has a medical contraindication, the individual shall be advised of the clinical symptoms of active TB disease, and have an interval medical history for clinical symptoms of active TB disease every six (6) months during the two (2) years following conversion.

(b) A resident less than five (5) years of age who has a status change on admission to the facility or on annual testing shall be seen and monitored by a pediatrician.

(c) A resident or staff member who has a TST result of ten (10) millimeters or more induration or a positive BAMT at the time of admission of the resident or employment of the staff member, shall be offered treatment for LTBI.

(d) A resident or staff member who has a TST result of five (5) or more millimeters of induration at the time of admission or employment and who has medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive shall be offered treatment for LTBI.

(e) If a resident or staff member refuses treatment for LTBI detected on admission or employment or has a medical contraindication, the individual shall be educated about the clinical symptoms of active TB disease, and have an interval medical history for symptoms of active TB disease every six (6) months during the two (2) years following admission or employment. The education shall be documented in either the resident's medical record or the employee's health record.

(5) A resident who stays longer than one (1) year in the facility or staff member who documents completion of treatment for LTBI shall:

(a) Be exempt from further requirements for TSTs or BAMTs; and

(b) Receive education on the symptoms of active TB disease during his or her annual tuberculosis risk assessment and any other monitoring in accordance with Section 21, Section 25, or this section of this administrative regulation.

MARY REINLE BEGLEY, Inspector General
JANINE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 January 3, 2011 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: Mary Begley, Inspector General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation further conforms to the content of HB 231, passed during the 2010 Session of the General Assembly and codified at KRS 216B.457(21), by establishing requirements for the operation of Level II psychiatric residential treatment facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by establishing requirements for the operation of Level II psychiatric residential treatment facilities pursuant to HB 231, passed during the 2010 Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for compliance with the amendments to KRS Chapter 216B enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.457(21) by establishing requirements for the operation of Level II psychiatric residential treatment facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to provide the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 21 licensed Level I psychiatric residential treatment facilities in Kentucky. This administrative regulation will enable entities to apply for licensure as a Level II psychiatric residential treatment facility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, an entity applying for licensure as a Level II psychiatric residential treatment facility shall:

Submit an application and licensure fee to the Office of Inspector General;

Not be licensed for more than 50 beds;

Be located in a separate part of a psychiatric hospital, separate part of an acute care hospital, in a completely detached building, or on the campus of a Level I psychiatric residential treatment facility if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I facility;

Be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards;

Maintain written documentation related to the facility's administration and operation;

Have a governing body with overall authority and responsibility for the facility's operation;

Have a program director responsible for the administrative management of the facility;

Employ a sufficient number of qualified mental health professionals to meet the treatment needs of residents and goals and objectives of the facility;

Designate one full time qualified mental health professional as the clinical director. (An individual may serve as both the clinical director and the program director);

Employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents 24 hours per day, and submit a staffing plan to the Cabinet in accordance with KRS 216B.457;

Ensure that staff submit to annual in-service training requirements;

Comply with the employee background check requirements of KRS 216B.457;

Provide each resident and the resident's parent, guardian, or custodian with a description of the resident's rights;

Maintain resident records;

Have an organized quality assurance program;

Maintain written admission criteria;

Maintain written policies and procedures related to the facility's intake process;

Perform timely evaluations and assessments for each resident;

Develop and implement each resident's plan of care;

Ensure the provision of mental health services, physical health services, dietary services, emergency services, pharmacy services, educational and vocational services, recreational activities, and speech, language, and hearing services;

Comply with requirements related to the use of restraints and seclusion;

Maintain a clean, safe, and hygienic environment;

Maintain an infection control program; and

Comply with requirements for tuberculosis skin testing of staff and residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a Level I psychiatric residential treatment facility remains $270, as established in this administrative regulation and in 902 KAR 20:008. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds will be $270. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds will be $270, plus $10 for each bed beyond the ninth bed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation and 902 KAR 20:330 will be approved for licensure as a Level I or Level II psychiatric residential treatment facility.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from psychiatric residential treatment facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a Level I psychiatric residential treatment facility remains $270, as established in this administrative regulation and in 902 KAR 20:008. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds will be $270. The initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds will be $270, plus $10 for each bed beyond the ninth bed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a Level II psychiatric treatment facility.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the licensure of Level I and Level II psychiatric residential treatment facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.457(21)

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 establishes an initial and annual fee of $270 for licensure as a Level II psychiatric residential treatment facility with 9 or fewer beds. This amendment also establishes an initial and annual fee for licensure as a Level II psychiatric residential treatment facility with 9 to 50 beds as $270, plus $10 for each bed beyond the ninth bed. The Cabinet will collect the applicable licensure fee amount from entities applying for licensure as Level II psychiatric residential treatment facilities 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? The Cabinet will collect an annual licensure fee based on the Level II facility's number of beds during subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:330. Psychiatric residential treatment facilities.

RELATES TO: KRS 216B.010-216B.130, 216B.450-216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.457(21)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. This administrative regulation establishes physical plant requirements for Level I and Level II psychiatric residential treatment facilities (PRTF). This administrative regulation allows existing facili-

ties or residential units, with modifications, to be licensed as a Level I PRTF facility[~~in this category of health care~~].

Section 1. Definitions. (1) "Certificate of need" is defined by KRS 216B.015(8).

(2) "Licensure agency" means the Cabinet for Health and Family Services, Office of the Inspector General.

(3) "Living unit" means:

(a) The area within a single building that is supplied by a Level I [~~the~~] facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(4) "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5) as a Level I facility or a Level II facility.

Section 2. Preparation and Approval of Plans and Specifications for a Level I or a Level II PRTF. After receipt of[~~the applicant for license has received~~] a certificate of need, if required under KRS Chapter 216B, and before initiation of new construction or renovation, or prior to making a change in function of a facility, the following process shall be followed:

(1) [~~Before initiation of new construction or alterations to an existing building,~~] The licensee or applicant shall submit plans in sufficient detail to show compliance with [~~Section 3 of~~] this administrative regulation to the licensure agency for approval.

(2) Architectural, mechanical, and electrical drawings shall bear either the seal of a professional engineer registered in the Commonwealth of Kentucky or an architect registered in the Commonwealth of Kentucky.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) A copy of the narrative program for a project shall be provided to the licensure agency by the applicant or licensee and shall describe the functional space requirements, staffing patterns, departmental relationships, and organizational plans relating to the fulfillment of the mission and objectives of the facility.

(5) Plans and specifications shall be approved by the licensure agency prior to commencement of construction of a new building, renovation[~~or alterations~~] of an existing facility, or making a change in function of a facility.

(6)[~~building.~~

~~(5)~~] Plans and specifications in specific detail as required by the Kentucky Building Code, 815 KAR 7:120, shall be submitted together with architectural or engineering stamps as required by KRS Chapters 322 and 323, to the Department[~~Office~~] of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. Plans and specifications shall be approved by the Department[~~Office~~] of Housing, Buildings and Construction, and local building permits shall be obtained prior to commencement of construction.

(6) Representatives of the Cabinet for Health and Family Services shall have access at all reasonable times to the work wherever it is in preparation or progress.

Section 3. Level I and Level II PRTF: Compliance with Building Codes, Ordinances, and Administrative Regulations.

(1) A PRTF shall be in compliance with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions.

(2) The following requirements shall apply when a PRTF is constructed, modified, or renovated:

(a) Fire safety pursuant to 815 KAR 10:060.

(b) Plumbing pursuant to 815 KAR 20:010 through 20:195.

(c) Elevators pursuant to 815 KAR 4:010 through 4:025.

(d) Building accessibility by persons with disabilities pursuant to 28 C.F.R. Part 36.

(3) New construction, modification, or renovation shall be approved by the Department[~~Office~~] of Housing, Buildings and Construction prior to occupancy. [~~(4) A facility shall have current approval from the Office of Housing, Buildings and Construction prior to initial licensure and annual relicensure.~~]

Section 4. Level I and Level II PRTF: Facility Requirements and Special Conditions. (1) A facility shall be accessible to and usable by persons with disabilities in compliance with the provisions of the Americans With Disabilities Act, 42 U.S.C. 12101 et seq.

(2) Access to a facility shall be by means of a paved or gravel roadway that is open, free from obstruction, and in good repair.

(3)[~~A copy of the narrative program for a project shall be provided to the licensure agency by the applicant or licensee and shall describe the functional space requirements, staffing patterns, departmental relationships, and organizational plans relating to the fulfillment of the mission and objectives of the facility.~~

~~(4)~~] The building structure and overall physical environment, including the number and type of diagnostic, clinical, and administrative rooms, educational facilities if applicable, and recreational space shall:

(a) Be sufficient to meet the needs of the patient census and specialized program needs of the residents as described in the facility's narrative program document; and

(b) Ensure a secure environment for residents.

Section 5. Living Unit for a Level I PRTF. A living unit shall be located within a single building and shall comply with the requirements in this section:

(1) Bedrooms.

(a) A bedroom shall not be used for sleeping accommodations for more than two (2) residents.

(b) A bedroom shall be equipped with a bed for each resident that shall:

1. Be at least thirty-six (36) inches wide and sixty (60) inches long;

2. Accommodate the resident's size;

3. Be positioned to allow at least three (3) feet of free space between beds and four (4) feet of free space extending directly away from the foot of the bed; and

4. Be located sufficient distance from radiators, heat outlets, and drafts to avoid discomfort.

(c) A resident's bed shall be equipped with:

1. A support mechanism and a clean mattress;

2. A mattress cover with rubber or impervious sheets, if necessary;

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(d) Separate sleeping quarters shall be maintained for male and female residents.

(e) A resident shall not be housed in a room, detached building, or other enclosure which has not been inspected and approved for occupancy by the licensure agency and the Department[~~Office~~] of Housing, Buildings and Construction.

(f) A bedroom shall not be located more than sixty (60) feet from a duty station, and the egress doorway shall be visible to the duty station at all times.

(g) A room shall not be used as a resident bedroom if the access is through another resident's bedroom.

(2) Bathrooms.

(a) Each living unit shall have at least one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every five (5) residents residing within the living unit.

(b) Separate toileting, bathing, and showering facilities shall be maintained and be available for each sex.

(c) Each bathroom shall have a wastebasket and an adequate supply of toilet paper, towels, and soap.

(d) If more than one (1) toilet is required or available in the same room, each shall be partitioned for privacy and shall include a door capable of remaining closed.

(e) Bathing and showering facilities shall have enclosures or screens for individual privacy. Shower heads shall be of institutional safety type.

(f) At least one (1) bathing facility shall have space that is accessible to a resident who uses a wheelchair. The wheelchair-accessible bathing facility may serve both sexes, and the facility shall provide staff to assist residents during bathing and showering.

(g) Each bathroom shall contain at least one (1) nondistorting

mirror secured to the wall at a height which shall accommodate individuals with disabilities and other residents.

(h) A bathroom shall not be constructed in such a way as to require a resident to pass through another resident's bedroom for access. The bathroom shall have only one (1) door.

(3) A resident's wardrobe or closet shall have minimum dimensions of one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full-length hanging space including clothes rod and shelf. Additional areas shall be provided for storage of a resident's winter coats, raincoats, and other bulky articles of clothing and shall be locked and under staff control.

(4) Each resident shall have a chair and desk with minimum dimensions of one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(5) Windows accessible to the outside shall be secure and shall prevent unauthorized egress and ingress. Safety features shall be included on windows to ensure glass and glass fragments do not constitute a safety hazard.

(6) If a staff call system is available, provisions shall be made to permit removal of call buttons or use of blank plates if appropriately documented in a resident's treatment plan.

(7) Living, dining, and recreation.

(a) The total area provided for living and recreation shall not be less than forty (40) square feet per resident;

(b) The total area provided for dining shall not be less than fifteen (15) square feet per resident.

(c) The living area shall include comfortable seating for at least ten (10) persons.

(d) Indoor recreation equipment shall be available and appropriate for the ages served and shall be maintained in good condition;

(e) Enclosed storage shall be provided for recreational equipment and supplies;

(f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass, and other objects which pose a safety hazard; and

(g) Outdoor recreation equipment in good condition and appropriate for the ages of the residents shall be provided and maintained.

(8) Each service area shall include a duty station and medicine dispensing area.

(a) A duty station shall be constructed to include adequate space for charting and for conducting all other aspects of a patient's care.

(b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. Medication shall be kept in a locked storage area, a secure, self-contained dispensing unit, or other system capable of maintaining secure and controlled storage.

2. The medication dispensing area shall be under the treatment staff's visual control and shall contain a work counter, refrigerator, sink and locked storage for biologicals and drugs.

3. The medication dispensing unit may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.

4. All controlled substances shall be maintained by staff under double lock.

(c) A dedicated linen storage area shall be available and shall be used for storing clean linens.

(9) The living unit shall have at least one (1) operable food preparation area with sink, stove, and refrigerator, unless a kitchen is directly available within the same building as the living unit.

Section 6. Living Unit for a Level II PRTF. (1) A living unit in a Level II PRTF shall:

(a) Accommodate a maximum of twelve (12) residents; and

(b) Serve one (1) gender.

(2) Environment.

(a) A Level II PRTF shall avoid hidden alcoves or blind areas.

(b) A perimeter security system shall be provided to contain residents in the living unit until clinical staff are able to escort the resident or residents to an adjacent compartment or an exit stair.

(c) The perimeter security system shall:

1. Be designed to prevent contraband smuggling; and

2. Include provisions for monitoring and controlling visitor access and egress.

(d) Openings in the perimeter security system, including windows or doors, shall be controlled by locks, which may be manual, electric, or magnetic.

(3) Bedrooms.

(a) A bedroom shall not be used for sleeping accommodations for more than one (1) resident.

(b) A bedroom shall be equipped with a bed that shall:

1. Be at least thirty-six (36) inches wide and sixty (60) inches long;

2. Accommodate the resident's size; and

3. Be located sufficient distance from radiators, heat outlets, and drafts to avoid discomfort.

(c) A resident's bed shall be equipped with:

1. A support mechanism and a clean mattress;

2. A mattress cover with rubber or impervious sheets, if necessary;

3. Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(d) A resident room shall have a minimum clear floor area of 100 square feet.

(e) A resident shall not be housed in a room, detached building, or other enclosure which has not been inspected and approved for occupancy by the licensure agency and the Department of Housing, Buildings and Construction.

(f) A bedroom shall not be located more than sixty (60) feet from a duty station, and the egress doorway shall be visible to the duty station at all times.

(g) A room shall not be used as a resident bedroom if the access is through another resident's bedroom.

(h) Each resident room shall have a chair and desk with minimum dimensions of one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(4) Resident storage.

(a) Each resident shall have within his or her room a separate wardrobe, locker, or closet for storing personal effects.

(b) Shelves for folded garments shall be used.

(c) Adequate storage shall be available for a daily change of clothes for seven (7) days.

(d) An area separate from the resident's wardrobe, locker, or closet shall be provided for storage of winter coats, raincoats, and other bulky articles of clothing, and shall be locked and under staff control.

(5) Shared bathing and toilet facilities.

(a) A bathtub or shower and a toilet shall be provided for each five (5) or fewer residents.

(b) Each shower or bathing room shall have a toilet.

(c) Bathing facilities shall be designed and located for resident convenience and privacy.

(d) Separate bathing and showering facilities shall be maintained and be available for each sex.

(e) Each bathing facility shall have a wastebasket, an adequate supply of toilet paper, and meet the hand drying provisions established in subsection (10) of this section.

(f) If more than one (1) toilet is available in the same bathing room, each shall be partitioned for privacy and shall include a door capable of remaining closed.

(g) Bathing and showering facilities shall have enclosures or screens for individual privacy. Shower heads shall be of institutional safety type.

(h) At least one (1) bathing facility shall have space that is accessible to a resident who uses a wheelchair. The wheelchair-accessible bathing facility may serve both sexes, and the facility shall provide staff to assist residents during bathing and showering.

(i) Each bathing facility shall contain at least one (1) nondistorting mirror secured to the wall at a height which shall accommodate individuals with disabilities and other residents.

(j) A bathing facility shall not be constructed in such a way as to require a resident to pass through another resident's bedroom for access. The bathing facility shall have only one (1) door.

(k) If indicated in a resident safety risk assessment, toilet room

doors shall be equipped with keyed locks that allow staff to control access to the toilet room.

(l) The door to the toilet room shall swing outward or be double–acting.

(m) Each entry door into a resident toilet room shall:

1. Be ADA (Americans with Disabilities Act) or ANSI (American National Standards Institute) compliant; and

2. Shall provide space for staff to transfer residents to the toilet using portable mechanical lifting equipment.

(n) Thresholds in toilet rooms that are ADA or ANSI-compliant shall be designed to facilitate use and prevent tipping of wheelchairs or other portable wheeled equipment by residents and staff.

(6) If a staff call system is available, provisions shall be made to permit removal of call buttons or use of blank plates if appropriately documented in a resident's treatment plan.

(7) Bathing facility hardware and accessories.

(a) Special design considerations for injury and suicide prevention shall be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) ADA or ANSI-compliant grab bars shall be required in ten (10) percent of the toilet rooms. The space between the bar and the wall shall be filled to prevent a cord being tied around it.

(c) Grab bars in resident toilet rooms for fully ambulatory residents shall be removable.

(d) Bars, including those that are part of fixtures which may include soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds.

(e) The following shall not be permitted:

1. Towel bars;

2. Shower curtain rods; and

3. Lever handles, unless a specifically designed anti-ligature lever handle is used.

(8) Sprinkler heads and other protrusions.

(a) In unsupervised resident areas, sprinkler heads shall be recessed or of a design to minimize resident access.

(b) In resident bedrooms and bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other appurtenances shall be of the tamper-resistant type.

(9) Hand-washing stations.

(a) General hand-washing stations used by staff, residents, and food handlers shall be trimmed with valves which may be operated without hands.

(b) Single-lever or wrist blade devices shall be permitted. Blade handles shall be at least four (4) inches.

(c)1. Sensor-regulated water fixtures shall meet user need for temperature and length of time the water flows.

2. Electronic faucets shall be capable of functioning during loss of normal power.

3. Sensor-regulated faucets with manual temperature control shall be permitted.

(10) Provisions for hand drying.

(a) Hand-washing stations shall include a hand-drying device that does not require hands to contact the dispenser and may include:

1. Paper or cloth units enclosed to protect against dust or soil, and to ensure single-unit dispensing;

2. Hot air dryers if installation eliminates possible contamination by recirculation of air.

(b) Hand-washing stations shall include liquid or foam soap dispensers.

(11) Ceilings.

(a) Ceilings shall be monolithic.

(b) Ceiling systems of lay-in ceiling tile design shall not be permitted.

(c) In resident bathrooms:

1. The ceiling shall be secured from access; and

2. Plumbing, piping, duct-work, or other potentially hazardous elements shall be concealed above a ceiling.

(d) In resident bedrooms and bathrooms, ceiling access panels shall be secured.

(e) In resident bedrooms and bathrooms, ventilation grilles shall be:

1. Secured and shall have small perforations to eliminate their use as a tie-off point; or

2. Shall be of sufficient height to prevent resident access.

(12) Doors and door hardware.

(a) Door openings for resident use shall have a minimum clear width of two (2) feet ten (10) inches.

(b) Doors for private resident bathrooms or shower areas shall swing out to allow for staff emergency access.

(c)1. Door closers shall be avoided unless required.

2. Door closer devices, if required on the resident room door, shall be mounted on the public side of the door. The door closer shall be within view of a staff workstation.

(d) Door hinges shall be designed to minimize points for hanging and may include cut hinge type.

(e) Door lever handles. Except for specifically designed anti-ligature hardware, door lever handles shall point downward when in the latched or unlatched position.

(f) Door hardware shall have tamper-resistant fasteners.

(13) Windows.

(a) Each resident room shall have one (1) window.

(b) The minimum net glazing area shall be no less than eight (8) percent of the floor area of the resident's room.

(c) If an operable window is provided in a resident's room, operation of the window shall be restricted to inhibit possible escape or suicide.

(d) Windows shall be designed to limit the opportunities for residents to seriously harm themselves or others.

(e) Glazing (interior and exterior), borrowed lights, and glass mirrors shall be fabricated with laminated safety glass or protected by polycarbonate, laminate, or safety screens.

(g) Insect screens. Windows and outdoor doors that are frequently left open shall be equipped with insect screens.

(14) Furnishings.

(a) Furniture shall be constructed to withstand physical abuse.

(b) Drawer pulls shall be of the recessed type.

(15) Living, dining, and recreation.

(a) The total area provided for living and recreation shall not be less than forty (40) square feet per resident;

(b) The total area provided for dining shall not be less than fifteen (15) square feet per resident.

(c) The living area shall include comfortable seating for at least twelve (12) persons.

(d) Indoor recreation equipment shall be available and appropriate for the ages served and shall be maintained in good condition;

(e) Enclosed storage shall be provided for recreational equipment and supplies;

(f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass, and other objects which pose a safety hazard; and

(g) Outdoor recreation equipment in good condition and appropriate for the ages of the residents shall be provided and maintained.

(16) Each service area shall include a duty station and medicine dispensing area.

(a) A duty station shall be constructed to include adequate space for charting and for conducting all other aspects of a residents' care.

(b) Provision shall be made for twenty-four (24) hour distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. Medication shall be kept in a locked storage area, a secure, self-contained dispensing unit, or other system capable of maintaining secure and controlled storage.

2. The medication dispensing area shall be under the treatment staff's visual control and shall contain a work counter, refrigerator, sink and locked storage for biologicals and drugs.

3. The medication dispensing unit may be located at the duty station, in a clean workroom, or in an alcove under direct control of the treatment or pharmacy staff.

(c) A dedicated linen storage area shall be available and shall be used for storing clean linens.

(17) The living unit shall have at least one (1) operable food preparation area with sink, stove, and refrigerator, unless a kitchen is directly available within the same building as the living unit.

Section 7. Classroom Requirements for Level II PRTF Facilities. (1) A Level II PRTF shall have classroom space to accommodate the residents' needs.

(2) A classroom capacity shall not exceed twelve (12) students.

Section 8. Kitchen Area for Level I and Level II PRTF Facilities. (1) If a commercial service is used or if meals are provided by an adjacent facility, dietary areas and equipment shall ensure sanitary, efficient and safe storage, processing, and handling of food products.

(2) If meals are prepared on site, the facility shall have a food service area large enough to accommodate residents and staff, and which shall be capable of maintaining a three (3) day supply of refrigerated and dry foods.

(3) The kitchen area shall include a janitor's closet with sufficient space for storage of housekeeping supplies and equipment and shall include a locked area for hazardous materials.

Section 9.[~~7.~~] Administration Area for Level I and Level II PRTF Facilities. Sufficient space shall be available for administrative operations.

Section 10.[~~8.~~] Consultation and Visitation Rooms for Level I and Level II PRTF Facilities. Professional consultation rooms shall be available for interview, examination, treatment, and visitation. These rooms shall afford privacy for the resident.

Section 11.[~~9.~~] Pharmacy or Drug Area for Level I and Level II PRTF Facilities. Adequate facilities shall be available to accommodate the safe storage and handling of pharmaceuticals including double locking of controlled substances and refrigeration for biologicals and drugs which require refrigeration.

Section 12. Level I PRTF: Requirements for Rooms Designated for Seclusion[~~10. Seclusion Room~~]. (1) If a[~~seclusion~~] room designated for seclusion is provided by a Level I PRTF, it shall be:

(a) Completely padded and constructed to minimize the possibility of a resident's hiding, escape, injury, or suicide and shall not include fixtures, hardware, furniture, receptacles, switches, or other items that may present a risk to a secluded resident; and

(b) Used only for short-term occupancy by a resident who may have become violent or suicidal.

(2) The[~~A seclusion room~~] door to a seclusion room shall swing outward and shall have provisions for constant staff observation while maintaining privacy.

Section 13. Level II PRTF: Requirements for Rooms Designated for Seclusion. (1) Each living unit shall have one (1) room designated for seclusion.

(2) The room designated for seclusion shall:

(a) Be constructed to minimize the possibility of a resident's hiding, escape, injury, or suicide and shall not include fixtures, hardware, furniture, receptacles, switches, or other items that may present a risk to a secluded resident;

(b) Have a minimum clear floor area of sixty (60) square feet with a minimum wall length of seven (7) feet and a maximum wall length of eleven (11) feet;

(c) Not contain outside corners or edges; and

(d) Be accessed by an anteroom or vestibule that provides access to a toilet room. The door openings to the anteroom and the toilet room shall have a minimum clear with of three (3) feet eight (8) inches.

(3) The walls, ceiling, and floor of the room designated for seclusion shall be designed to withstand direct and forceful impact.

(4) The entrance door to the room designated for seclusion shall swing out.

(5) Door openings shall be a minimum clear width of three (3) feet eight (8) inches and shall permit staff observation of the resident through a vision panel, while maintaining provisions for resident privacy.

(6) Minimum ceiling height shall be eight (8) feet.

(7) Electrical switches and receptacles shall be prohibited within the room designated for seclusion.

Section 14. [~~11.~~] Storage and Service Areas for Level I and Level II PRTF Facilities. (1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas shall be provided and shall include:

(a) Storage room for housekeeping equipment that cannot be accommodated by a janitor's closet or other storage area; and

(b) Refuse area located in an area convenient to the service entrance for holding trash prior to disposal.

Section 15. [~~12.~~] Details and Finishes for Level I and Level II PRTF Facilities. The facility shall be constructed and maintained to minimize risk to occupants, staff, and visitors, and shall comply with the following requirements:

(1) Details.

(a) All doors opening onto corridors shall be swing-type except elevator doors.

(b) All doors to a resident's bathroom toilet shall swing outward or shall be equipped with hardware that permits immediate access in case of emergency.

(c) Thresholds and expansion joint covers shall be flush with the floor.

(d)[~~A towel rack or dispenser shall be provided at all lavatories and sinks used for handwashing.~~

~~(e)~~] Ceiling height shall not be less than seven (7) feet and six (6) inches, and shall be no less than eight (8) feet in the room designated as the seclusion room in a Level II PRTF facility.

Section 14.[~~11.~~] Storage and Service Areas for Level I and Level II Facilities. (1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas shall be provided and shall include:

(a) Storage room for housekeeping equipment that cannot be accommodated by a janitor's closet or other storage area; and

(b) Refuse area located in an area convenient to the service entrance for holding trash prior to disposal.

Section 15.[~~12.~~] Details and Finishes for Level I and Level II PRTF Facilities. The facility shall be constructed and maintained to minimize risk to occupants, staff, and visitors, and shall comply with the following requirements:

(1) Details.

(a) All doors opening onto corridors shall be swing-type except elevator doors.

(b) All doors to a resident's bathroom toilet shall swing outward or shall be equipped with hardware that permits immediate access in case of emergency.

(c) Thresholds and expansion joint covers shall be flush with the floor.

(d)[~~A towel rack or dispenser shall be provided at all lavatories and sinks used for handwashing.~~

~~(e)~~] Ceiling height shall not be less than seven (7) feet and six (6) inches, and shall be no less than eight (8) feet in the room designated as the seclusion room in Level II PRTF facility.

(2) Finishes.

(a) Floors shall be easily cleanable and shall have wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. Floors shall have a nonslip finish in all areas that are subject to moisture.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an even transition.

(c) Walls shall be washable and kept clean and shall be moisture-proof in areas that are adjacent to plumbing fixtures. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings shall be washable and kept clean and in good repair.

(e) Rooms containing heat-producing equipment such as laundries and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

Section 16.[~~13.~~] Construction for Level I and Level II PRTF Facilities. (1) Foundations shall rest on natural solid ground if a

satisfactory soil is available at reasonable depths.

(2) Proper soil bearing values shall be established in accordance with recognized standards.

(3) If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 17.[~~14.~~] Mechanical Requirements for Level I and Level II PRTF facilities. (1) Steam and hot water systems. If boilers are provided in residential treatment facilities the design and installation shall comply with 815 KAR 15:010 through 15:080.

(2) Temperature.

(a) A minimum temperature of sixty-eight (68) degrees Fahrenheit shall be provided in occupied areas during winter.

(b) A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided in occupied areas during summer.

(3) Plumbing and piping systems.

(a) All showers and bathtubs shall be equipped with a temperature-limiting device at the point of source or point of use which controls hot water at a maximum temperature of 120 degrees Fahrenheit.

(b) Fixtures used in the dietary area, the clean work room and medi/prep area shall be trimmed with valves which can be operated without the use of hands.

(c) If valves are equipped with blade handle controls, the controls shall be approximately four (4) inches in length.

(d) Fixtures shall be installed to provide adequate side clearance for proper use of the blade handles.

(4) Water supply systems.

(a) A water supply system shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) An operable valve shall be installed at each water service main, branch main, riser, and branch to a group of fixtures. Stop valves shall be installed at each fixture.

(c) Insulation shall be maintained on hot, cold and chilled water piping and waste piping on which condensation may occur. Insulation of cold and chilled water lines shall include an exterior barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibs and on all fixtures onto which hoses or tubing can be attached.

(e) Hot water distribution systems shall be arranged to provide hot water at each fixture.

(f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from overhead piping systems.

(5) Hot water heaters and tanks.

(a) Hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

Gal/hr/bed	6 1/2
Temperature (Degrees Fahrenheit)	100-120

(b) A storage tank shall be provided and shall be fabricated of corrosion-resistant metal or have a noncorrosive lining.

(6) Prior to licensure, all plumbing specifications shall be approved by the Kentucky Division of Plumbing, Department[~~Office~~] of Housing, Buildings and Construction.

Section 18.[~~15.~~] Electrical Requirements for Level I and Level II PRTF Facilities. (1) Electrical requirements of the Kentucky Building Code shall apply.

(2) The wiring in each PRTF shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility prior to occupancy; except, the wiring in existing buildings shall be approved by a certified electrical inspector only if the building has not been previously so approved for health care occupancy or if the State Fire Marshal finds that a hazardous condition exists.

(3) All breakers and switches shall be indexed.

(4) Spaces occupied by people, machinery, and equipment within buildings, the corresponding approaches, and parking lots shall have electric lighting.

(5) Residents' bedrooms shall have general lighting, a night light, and, if appropriate, a reading light.

(6) A resident's bedroom shall have duplex receptacles as follows:

(a) One (1) side of the head of each bed; receptacles for luminaries, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

(7) Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

MARY REINLE BEGLEY, Inspector General
JANINE MILLER, Secretary

APPROVED BY: October 14, 2010

FILED WITH LRC: October 18, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 January 3, 2011. 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: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure standards for psychiatric residential treatment facility physical plant requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure standards for psychiatric residential treatment facility physical plant requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure physical plant requirements to ensure safe, adequate, and efficient health facilities.

(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 the Office of Inspector General with authority to ensure that psychiatric residential treatment facilities provide adequate and safe physical plants to meet resident need.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by establishing physical plant requirements for Level II psychiatric residential treatment facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for compliance with the amendments to KRS Chapter 216B enacted by the 2010 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.457(21) by establishing physical plant requirements for Level II psychiatric residential treatment facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to provide the Office of Inspector General with the authority to ensure that psychiatric residential treatment facilities provide adequate services to meet resident need and provide for resident safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 21 licensed Level I psychiatric residential treatment facilities in Kentucky. This administrative regulation will enable entities to apply for licensure as a Level II psychiatric residential treatment facility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, an entity applying for licensure as a Level II psychiatric residential treatment facility shall:

Submit plans and specifications to the Office of Inspector General for approval prior to initiation of new construction or renovation, or prior to making a change in function of a facility;

Comply with applicable building codes, ordinances, and administrative regulations;

Provide a living unit designated for daily living and therapeutic interaction of no more than 12 residents;

Ensure that the environment of the facility's living unit is configured to accommodate this administrative regulation's requirements for safety and security;

Provide bedrooms that are not used for sleeping accommodations for more than one resident;

Have bathing and toilet facilities for each five or fewer residents; and

Adhere to this administrative regulation's requirements related to bedrooms, bathing facilities, ceilings, doors and hardware, windows, furnishings, living and recreational areas, the nursing station and medicine dispensing area, food preparation area, classroom requirements, consultation and visitation rooms, storage of pharmaceuticals, rooms designated for seclusion if provided by the facility, storage space, details and finishes, construction, water systems, and electrical requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Facilities do not incur additional costs for compliance with the physical plant requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with the physical plant requirements of administrative regulation and the operation and service requirements of 902 KAR 20:320 will be approved for licensure as a Level I or Level II psychiatric residential treatment facility.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from psychiatric residential treatment facilities under 902 KAR 20:320 and state general funds.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.457(21)

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 relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities and therefore does not generate revenue for state government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation relates to the physical plant requirements for Level I and Level II psychiatric residential treatment facilities and therefore does not generate revenue for state government.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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 Examiners of Psychology
(New Administrative Regulation)

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140
STATUTORY AUTHORITY: KRS 319.032(2); KRS 319.140(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 sets forth the duty of a treating psychologist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for preventing abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 2(2);
(2) "Telehealth" is defined by KRS 319.140(3);
(3) "Telepsychology" means the practice of psychology as defined by KRS 319.010(7) between the psychologist and the patient:
(a) Provided using any electronic communication technology, or;
(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:
(1) Make reasonable attempts to verify the identity of the client;
(2) Obtain alternative means of contacting the client other than electronically;
(3) Provide to the client alternative means of contacting the credential holder other than electronically;
(4) Document whether the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;
(5) Use secure communications with clients, including encrypted text messages via e-mail or secure websites, and not use personal identifying information in non-secure communications;
(6) Inform the client in writing about:
(a) The limitations of using technology in the provision of telepsychology;
(b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;
(c) Potential risks of disruption in the use of telepsychology;
(d) When and how the credential holder will respond to routine electronic messages, and;
(e) In what circumstances the credential holder will use alternative communications for emergency purposes;
(f) Who else may have access to client communications with the credential holder;
(g) How communications can be directed to a specific credential holder;
(h) How the credential holder stores electronic communications from the client, and;
(f) The reporting of clients required by 201 KAR 26:145, Section 7(9).

Section 3. Competence, limits on practice, maintenance and retention of records. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:
(1) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;
(2) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
(3) Document the client's presenting problem, purpose, or diagnosis;
(4) Follow the record-keeping requirements of 201 KAR 26:145, Section 3(6)(a)1-6; and
(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with federal, state, and local law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:
(1) Comply with state law where the credential holder is credentialed and be licensed to practice psychology where the client is domiciled, and;
(2) Comply with Section 508 of the Rehabilitation Act to make technology accessible to a client with disabilities;

Section 5. Representation of services and Code of Conduct. A credential holder using telehealth to deliver psychological services or who practices telepsychology:
(1) Shall not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telepsychology;
(2) Shall comply with 201 KAR 26:145.

THOMAS W. MILLER, Chair
APPROVED BY AGENCY: October 18, 2010
FILED WITH LRC: November 15, 2010 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 3 p.m., local time, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 3, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Mark Brengelman, Assistant Attorney General, Office of the Attorney General, Office of Civil and Environmental Law, Capitol Building, Suite 118, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449, phone (502) 696-5627, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark Brengelman, Assistant Attorney General
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the standards for a psychologist using telehealth and practicing telepsychology.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for a psychologist using telehealth and practicing telepsychology as required to be established by KRS 319.140.
(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 establishing the standards for a psychologist using telehealth and practicing telepsychology which apply to the statutorily-mandated duties and responsibilities of the psychologist set by statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the standards for a psychologist using

telehealth and practicing telepsychology which are to be established by the Board by administrative regulation which apply to the statutorily mandated duties and responsibilities of the psychologist set by statute.

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

(a) How the amendment will change this existing administrative regulation: 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 administrative regulation will apply to approximately 1,400 credential holders of the board, that is, all the psychologists credentialed in Kentucky, but only if the credential holder utilizes telehealth or practices telepsychology.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky-licensed psychologist who utilize telehealth or practice telepsychology will have to develop and implement new policies and procedures to comply with these standards of practice and new technological safeguards in order to protect the public.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some initial cost of approximately $100 to $200 will be required to comply with this administrative regulation to develop and implement new policies and procedures to comply with these standards of practice and new technological safeguards in order to protect the public, but with minimal continued costs of approximately $100 per year in each subsequent year in order to use those new technological safeguards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, Kentucky-licensed psychologists who utilize telehealth or practice telepsychology will be substantially less at risk for professional liability and for possible violations of KRS Chapter 319.

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

(a) Initially: No initial cost to the board.

(b) On a continuing basis: No continuing cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation comes from the fees charged to applicants and credential holders of the board; no tax revenues are used to fund the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, this administrative regulation applies to all Kentucky-licensed psychologists who utilize telehealth or practice telepsychology.

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 Examiners of Psychology.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(2) and 319.140(2)

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

JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Control Policy
(Amendment)

500 KAR 20:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) start-up funding for local boards.

RELATES TO: KRS 15A.340, 15A.342, 15A.344, 222.211, 248.723

STATUTORY AUTHORITY: KRS 15A.342(19)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.344 requires KY-ASAP to establish local advisory and coordination boards for tobacco addiction and alcohol and substance abuse prevention, cessation, and treatment. KRS 15A.342 requires the Office of Drug Control Policy and KY-ASAP to promulgate administrative regulations necessary to carry out KRS 15A.340 and 15A.344. This administrative regulation establishes procedures for local boards to receive start-up funding.

Section 1. Definitions. (1) "Kentucky Agency for Substance Abuse Policy" or "KY-ASAP" means the agency established at KRS 15A.340(1) to (3).

(2) "Local board" means the entity described at KRS 15A.344(1).

Section 2. Application Process. To receive start-up funding for a local board, an applicant shall comply with the procedures established by the Local Board Workbook.

Section 3. Start-Up Funding. (1) In order to ensure funding is received by local boards without unnecessary delay, KY-ASAP shall pay start-up funding in two (2) lump sum payments.

(2) The lump sum payments shall be used to develop and implement the strategic plan of the local board.

(3) An initial lump sum payment may be made after the procedures in Sections 1 through 13 of the Local Board Workbook have been completed.

(4) The final lump sum payment may be made after the procedures in Section 14 of the Local Board Workbook have been completed.

(5) No more than fifty (50) percent of the total start-up funds shall be used prior to the Office of Drug Control Policy executive director's approval of the local board's strategic plan.

(6) The total amount of start-up funds awarded to a local board

shall be $20,000 to the extent funds are available.

Section 4. Incorporation by Reference. (1) "Local Board Workbook", 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Agency for Substance Abuse Policy Office, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained on the agency's Web site at www.odcp.ky.gov/kyasap.

VAN INGRAM, Director
J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: November 9, 2010

FILES WITH LRC: November 12, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010 at 9 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. 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: Amy V. Barker, General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program through oversight by the Office of Drug Control Policy. The regulation establishes the requirements on proposals for the creation of a KY-ASAP local board, the composition of local KY-ASAP board membership and bylaws, the procedures for submitting funding applications, and the funding reporting requirements for local KY-ASAP boards.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 15A.342, this regulation governs the operations of the Kentucky Agency for Substance Abuse Policy Program, through oversight by the Office of Drug Control Policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides direction and information to the Office of Drug Control Policy, its employees, and the general public concerning the duties, responsibilities and processes of local KY-ASAP Boards.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the amount of start-up funding that may be available to new local boards from the KY-ASAP Program. This amendment deletes reporting requirements since they are being added to another regulation. The Local Board Workbook is revised to change reporting requirements and make clarifications.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.340, 15A.342, and 15A.344 authorize the KY-ASAP Program, through the Office of Drug Control Policy, to ensure the efficient operation of local KY-ASAP boards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information to local Kentucky ASAP boards and the general public regarding proposals for the creation of local boards, the composition of local KY-ASAP board membership; requirements for local board bylaws; the submission process for funding applications; and reporting requirements of the local KY-ASAP boards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all 120 Kentucky county governments through their local KY-ASAP Boards. Additionally, the regulation indirectly affects health departments, local school boards, fiscal courts, regional prevention centers, and other entities serving as fiscal agents for the local KY-ASAP Boards. The regulation indirectly affects local community businesses, school systems, health departments, and other community entities by allowing local KY-ASAP Boards to provide funding to these entities to carry out alcohol, tobacco and other drug prevention, treatment and enforcement programs in the community.

(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: KY-ASAP local boards and their fiscal agents will be required to follow the revisions in the Local Board Workbook and will have to adjust their plans due to reduced start-up funding.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments clarify requirements in the workbook and will assist in the effective administration of local boards, including proper composition of local ASAP board membership and the approval of applications for ongoing board funding.

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

(a) Initially: The KY-ASAP local boards are already administered by the Office of Drug Control Policy. There should not be any costs to implement this administrative regulation.

(b) On a continuing basis: Local KY-ASAP boards are already administered through the Office of Drug Control Policy. There should not be any costs to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Tobacco Settlement Agreement Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The Office of Drug Control Policy does not anticipate any additional funding and no fees are being increased.

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

(9) TIERING: Is tiering applied? No. Tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

State Government: Office of Drug Control Policy

Local Government: KY-ASAP boards and local government entities serving as the fiscal agent for each local ASAP board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.340, 15A.342, 15A.344.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This program has been funded through the Tobacco Settlement Agreement Program for several years and no new programs are created.

(d) How much will it cost to administer this program for subsequent years? This program has been funded through the Tobacco Settlement Agreement Program for several years and additional funding should not be required to support these amendments.

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

Revenues (+/-): None

Expenditures (+/-): The Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy, distributes its allocation of Tobacco Settlement Agreement funds down to local boards through a request for proposal (RFP) process. Each local board (currently 75 local boards representing 113 counties exist), after ascertaining its communities' needs and resources as they relate to alcohol, tobacco and other drug issues, submits a proposal for funding to address those issues. Factors used in determination of local board funding consist of compliance issues; conformity to applicable Kentucky Revised Statutes and Kentucky Administrative Regulations; the spending proposal as it relates to the local board's strategic plan; the spending proposal as it relates to the mission of KY-ASAP; the performance of the local board; and the fiscal responsibility of funds that have been allocated previously to the local board. The amount of the funding award will in part be based on how well the local board has documented their need and how this award will address the board's need.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Control Policy
(Amendment)

500 KAR 20:020. Kentucky Agency for Substance Abuse Policy (KY-ASAP) on-going funding for local boards and reporting requirements.

RELATES TO: KRS 15A.340, 15A.342, 15A.344, 222.211, 248.723

STATUTORY AUTHORITY: KRS 15A.342(19)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.344 requires KY-ASAP to establish local advisory and coordination boards for tobacco addiction and alcohol and substance abuse prevention, cessation, and treatment. KRS 15A.342 requires the Office of Drug Control Policy and KY-ASAP to promulgate administrative regulations necessary to carry out KRS 15A.340 and 15A.344. This administrative regulation establishes procedures for local boards to receive ongoing funding and establishes reporting requirements for the boards.

Section 1. Definitions. (1) "Good standing" means having completed and provided both semiannual reports according to the requirements established in Section 4 of this administrative regulation.

(2) "Kentucky Agency for Substance Abuse Policy" or "KY-ASAP" means the agency established at KRS 15A.340(1) to (3).

(3) "Local board" means that entity described at KRS 15A.344(1).

(4) "Ongoing funds" means dollars distributed from KY-ASAP for the purpose of supporting the strategic plans of local boards.

Section 2. Ongoing Funding Application Process and Review. (1) To request ongoing funding, a local board shall:

(a) Complete an application by the deadline during each funding period through:

1. The Justice and Public Safety Cabinet's Electronic Grants Management System; or

2. Other application process as directed by KY-ASAP; and

(b) Be in good standing.

(2) Awards of ongoing funding shall be:

(a) Contingent on available funding; and

(b) Proportionate based upon the number of counties in a local board.

(3) Factors used to evaluate the requests for ongoing funding shall include:

(a) Compliance with the frequency of meetings established in the local board's bylaws;

(b) Compliance with applicable Kentucky Revised Statutes and Administrative Regulations;

(c) Relation of spending proposal to the mission of KY-ASAP;

(d) Relation of spending proposal to local board's strategic plan;

(e) Fiscal responsibility in handling funds from previous allocations of funds from KY-ASAP;

(f) Effectiveness of the local board in its community; and

(g) Performance of local board in using previously requested funds in the manner for which the funds were requested.

(4) If KY-ASAP approves the funding, they shall notify:

(a) The fiscal agent of the local board;

(b) The chair of the local board; and

(c) If applicable, the board coordinator.

(4) If funding is awarded, KY-ASAP and the fiscal agent of the local board shall execute a contract in compliance with KRS Chapter 45A, to the extent funds are available.

Section 3. Continuing Obligations of Local Boards. (1) A local board shall comply with the continuing requirements after start-up contained in the Local Board Workbook incorporated by reference in 500 KAR 20:010.

(2) A local board shall provide to KY-ASAP within ten days a revised copy of the document if it makes a revision in any of the following documents:

(a) Mission/vision statement;

(b) Existing strategy;

(c) Organizational chart;

(d) Decision making process;

(e) Bylaws;

(f) Conflict resolution policy;

(g) Recruitment plan;

(h) Needs and resource assessment; and

(i) Strategic plan.

(3) A local board shall notify KY-ASAP within ten days in writing of changes in local board membership.

Section 4. Local Board Reports. (1) A local board shall report in writing semiannually to KY-ASAP on the following dates:

(a) January 15; and

(b) July 15.

(2) Each local board shall include the following information in the semiannual report required by KRS 15A.344(2):

(a) Information regarding the effectiveness, efficiency, and efforts of the program, as required by KRS 15A.344(2);

(b) Detail of expenditures made during the reporting period;

(c) Detail of strategic plan implementation;

(d) Recommendations for increased or decreased funding; as required by KRS 15A.344(2); and

(e) Changes in local board membership.

(4) KY-ASAP shall provide a copy of each semiannual report to the KY-ASAP State Board.

(5) All notices and documents provided to KY-ASAP shall be provided to the Office of Drug Control Policy at 125 Holmes Street, Frankfort, Kentucky 40601.

(6) If a local board fails to submit the required reports to KY-ASAP:

(a) The Executive Director of the Office of Drug Control Policy shall notify the local board's fiscal agent and chair, by certified letter, of the noncompliance, stating the reasons therefore;

(b) The local board may, within forty-five (45) days of the date of notice, submit a plan of corrective action to the executive director;

(c) The executive director shall, within thirty (30) days of receipt of a plan of corrective action, respond, in writing; and

(d) If the executive director determines that the proposed plan fails to meet the requirements of this administrative regulation, the executive director shall:

1. Present to the KY-ASAP State Board at its next scheduled meeting, the finding of noncompliance and the reasons therefore, accompanied by documentation supporting the decision; and

2. Take action to abolish the local board.

(3) A local board found in noncompliance, and whose proposed corrective plan is rejected, shall return or reimburse KY-ASAP the amount of funds received during the period of noncompliance, in accordance with the contract executed between the fiscal agent of the local board and the Justice and Public Safety Cabinet, Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy.

(4) A local board aggrieved by a finding of noncompliance may appeal pursuant to KRS Chapter 13B.

VAN INGRAM, Director
J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: November 9, 2010

FILES WITH LRC: November 12, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010 at 9 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502) 564-3279

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program through oversight by the Office of Drug Control Policy. The regulation establishes the procedures for requesting funding and the reporting requirements for local KY-ASAP boards.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 15A.342, this regulation governs the operations of the Kentucky Agency for Substance Abuse Policy Program, through oversight by the Office of Drug Control Policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides direction and information to the Office of Drug Control Policy, its employees, local KY-ASAP Boards, and the general public concerning the duties, responsibilities and processes of local KY-ASAP Boards.

(2) If 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 the KY-ASAP Program's current practices for requesting funding, making reports to KY-ASAP, and to clearly state the requirement to provide revised document to KY-ASAP when revisions are made by a local board.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.340, 15A.342, and 15A.344 authorize the KY-ASAP Program, through the Office of Drug Control Policy, to ensure the efficient operation of local KY-ASAP boards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information to local Kentucky ASAP boards and the general public regarding the composition of local KY-ASAP board membership, requirements for local board bylaws, the submission process for funding applications, and reporting requirements of the local KY-ASAP boards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all 120 Kentucky county governments through their local KY-ASAP Boards. Additionally, the regulation indirectly affects health departments, local school boards, fiscal courts, regional prevention centers, and other entities serving as fiscal agents for the local KY-ASAP Boards. The regulation indirectly affects local community businesses, school systems, health departments, and other community entities by allowing local KY-ASAP Boards to provide funding to these entities to carry out alcohol, tobacco and other drug prevention, treatment and enforcement programs in the community.

(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: Local KY-ASAP local boards and their fiscal agents will follow the policies and procedures relating to KY-ASAP board membership changes, bylaw requirements, ongoing funding applications, and reporting deadlines.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments relating to the operation of local KY-ASAP boards will assist in the effective administration of local boards, including proper composition of local ASAP board membership; the approval of applications for ongoing board funding; and completion of reporting deadlines.

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

(a) Initially: The KY-ASAP local boards are already administered by the Office of Drug Control Policy. There should not be any costs to implement this administrative regulation.

(b) On a continuing basis: Local KY-ASAP boards are already administered through the Office of Drug Control Policy. There should not be any costs to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Tobacco Settlement Agreement Funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The Office of Drug Control Policy does not anticipate any additional funding and no fees are being increased.

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

(9) TIERING: Is tiering applied? No. Tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

State Government: Office of Drug Control Policy

Local Government: KY-ASAP boards and local government entities serving as the fiscal agent for each local ASAP board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.340, 15A.342, 15A.344.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This program has been funded through the Tobacco Settlement Agreement Program for several years and no new programs are created.

(d) How much will it cost to administer this program for subsequent years? This program has been funded through the Tobacco Settlement Agreement Program for several years and additional funding should not be required to support these amendments.

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

Revenues (+/-): None

Expenditures (+/-): The Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy, distributes its allocation of Tobacco Settlement Agreement funds down to local boards through a request for proposal (RFP) process. Each local board (currently 75 local boards representing 113 counties exist), after ascertaining its communities' needs and resources as they relate to alcohol, tobacco and other drug issues, submits a proposal for funding to address those issues. Factors used in determination of local board funding are stated in the amendment to the regulation. The amount of the funding award will in part be based on how well the local board has documented their need and how this award will address the board's need.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(New Administrative Regulation)

501 KAR 1:080. Parole Board policies and procedures.

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.320(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.320(8) authorizes the promulgation of administrative regulations by the Parole Board.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures", March 29, 2010, are incorporated by reference. Probation and Parole Policies and Procedures include:

KYPB 01-00 Parole Board Organization and Administration
KYPB 02-00 Fiscal Management
KYPB 03-00 Personnel: Parole Board Members
KYPB 05-00 Management Information Systems
KYPB 06-00 Records
KYPB 09-00 Organization of the Parole Board
KYPB 10-00 Parole Hearing Process
KYPB 10-01 Parole Release Hearings
KYPB 11-00 Conditions of Parole
KYPB 12-00 Discharge
KYPB 13-00 Revocation and Arrests: Determination
KYPB 13-01 Revocation and Arrests: Preliminary Hearings
KYPB 13-02 Revocation and Arrests: Revocation Hearings
KYPB 14-00 Public and Legislative Relations

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Parole Board, 275 Main Street, 2nd Floor, 40602, telephone (502) 564-3620, fax (502) 564-8995, Monday through Friday, 8 a.m. to 4:30 p.m.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: November 15, 2010

FILED WITH LRC: November 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010 at 10 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2011. 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: John C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Cummings (502) 564-3620

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Parole Board including the rights and responsibilities of employees and the offender population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.320, 439.330 and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Kentucky Parole Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Kentucky Parole Board employees concerning their duties and responsibilities of their jobs and to offenders concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Parole Board into compliance with ACA Standards and updates current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the Kentucky Parole Board into compliance with ACA Standard, updates current practices for the department and its facilities, and conforms to the requirements of KRS 439.320, 439.330.

(c) How the amendment conforms to the content of the autho-

rizing statutes: t sets forth policies and procedures utilized by the Kentucky Parole Board to ensure efficient and effective management of the Board's operations.

(d) How the amendment will assist in the effective administration of the statutes: he amendment provides Board members and staff with information concerning the policies and procedures utilized by the Kentucky Parole Board to ensure efficient and effective management of the Board's operations

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Parole Board members, the Board's staff, offenders eligible for parole or on parole, and members of the public that are victims of, or affected by crime.

(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: Board members and staff will have to follow the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The policies and procedures will assist in the orderly and effective management of the Kentucky Parole Board.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Parole Board budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:
Budgeted Funds: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Property and Casualty Division
(New Administrative Regulation)

806 KAR 44:010. Notification of qualified locations.

RELATES TO: KRS 304.1-050(1), 304.44-010, 304.44-020, 304.44-060, 304.44-120

STATUTORY AUTHORITY: KRS 304.2-110, 304.44-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.44-120 authorizes the administrator of the mine subsidence fund to supervise in all respects consistent with the provisions of KRS 304.44, the operation and management of the mine subsidence insurance program and to do all things necessary or convenient to accomplish the purpose of KRS 304.44. This administrative regulation establishes procedures for counties and urban-county governments to notify the commissioner of their decision to approve the availability of mine subsidence within the county and establishes an annual effective date for participation in the mine subsidence insurance program.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "County" means a county, charter county, urban-county government, or a consolidated local government.

(3) "Eligible location" means those counties within the Commonwealth of Kentucky that have underground coal-bearing stratum or underground coal mines.

(4) "Mine subsidence insurance fund" is defined by KRS 304.44-010.

(5) "Qualified location" means a county in which the fiscal court had certified to the commissioner its approval of the availability of mine subsidence insurance within that county.

Section 2. Approval of Qualified Locations. (1)(a) In accordance with KRS 304.44-060, any county whose fiscal court has voted to approve or remove the availability of mine subsidence insurance in the county, shall provide documentation of the vote to the commissioner.

(b) Upon receipt of the documentation of an approval of the availability of mine subsidence insurance in the county, the commissioner shall

1. Consider whether the county is an eligible location; and

2. If the county is an eligible location, approve the county as a qualified location for participation in the mine subsidence insurance fund in accordance with subsection (2) of this section. Approval shall be on a prospective basis only.

(c) An approval as a qualified location shall continue until the commissioner receives notification from the county that the fiscal court has voted to remove the availability of mine subsidence insurance in the county.

(2)(a) If the commissioner receives the documentation of an approval or removal of the availability of mine subsidence insurance in the county as described in subsection (1) of this section more than 100 days prior to July 1, approval or removal as a qualified location shall be effective on July 1 of that same each year.

(b) If the commissioner receives the documentation of an approval or removal of the availability of mine subsidence insurance in the county described in subsection (1) of this section less than 100 days prior to July 1, approval as a qualified location shall be effective on July 1 of the subsequent year.

Section 3. Notification to Insurers of Qualified Locations. (1) Eighty-five (85) days prior to July 1 of each year, the commissioner

shall provide to insurers notice of the qualified locations participating in the mine subsidence insurance fund.

(2) The addition or removal of qualified locations shall apply to new insurance policies written and existing insurance policies renewed on or after July 1 of each year.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 10, 2010

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2010, at 9 a.m. (EST), 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 December 14, 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 January 3, 2011. 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, Staff Assistant, 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 procedures for counties and urban-county governments to notify the commissioner of their decision to approve the availability of mine subsidence within the county and establishes an annual effective date for participation in the mine subsidence insurance program.

(b) The necessity of this administrative regulation: This regulation is necessary for the efficient management of the mine subsidence insurance fund.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.44-120 authorizes the administrator of the mine subsidence fund to supervise in all respects consistent with the provisions of KRS 304, Subtitle 44, the operation and management of the mine subsidence insurance program and to do all things necessary or convenient to accomplish the purpose of KRS 304, Subtitle 44. This administrative regulation establishes procedures for counties and urban-county governments to notify the commissioner of their decision to approve the availability of mine subsidence within the county and establishes an annual effective date for participation in the mine subsidence insurance program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for the more efficient operation of the mine subsidence insurance fund by establishing a specific date each year that additions will be made to the qualified locations participating in the mine subsidence insurance fund.

(2) If 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 an unknown number of counties that may be approved as qualified locations participating in the mine subsidence insurance fund and the approximately 771 insurers licensed to write property insurance in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Counties voting to make mine subsidence insurance available in their county must submit documentation of that decision to the Department of Insurance 100 days prior to July 1 for the insurance to be offered beginning July 1 of that same year. Insurers will receive notice of the list of qualified locations 85 days prior to July 1, allowing them time to amend any internal processes, to begin offering mine subsidence insurance in new qualified locations on July 1 of each year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Other than minimal mailing costs, counties will not incur any costs to comply with this administrative regulation. Insurers will not incur any costs to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, counties will have mine subsidence insurance offered to their residents beginning July 1. While no affirmative duties are imposed on insurers through this administrative regulation, the procedure set forth in this administrative regulation will create an established timeframe to notify and implement changes to the counties participating the mine subsidence insurance fund, creating greater efficiencies in the system.

(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 counties seeking approval as a qualified location in the mine subsidence insurance fund.

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, the Property and Casualty Division of the Department of Insurance as administrator of the mine subsidence insurance fund, and counties voting to make mine subsidence insurance available to their residents.

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, 304.44-120

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 administrative regulation will not require administrative costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not require administrative costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The mine subsidence insurance fund is an established, self-supporting fund that provides reinsurance for losses to property as a result of mine subsidence. This administrative regulation sets forth a process for counties to notify the Department of Insurance that it has voted to have mine subsidence insurance offered to its residents. It also establishes a specific date, July 1, for changes to the participating counties so that insurers can have adequate time to make necessary changes to their processes in order to begin offering that coverage. The process changes to this existing program do not have an associated cost. Further, while the Department of Insurance is required to provide notice to insurers of the counties participating in the mine subsidence fund on an annual basis, this notice will likely be done electronically and without cost.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(New Administrative Regulation)

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

RELATES TO: KRS 216B.010, 216B.040

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)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 program. This administrative regulation establishes the requirements for registration of Magnetic Resonance Imaging units and the requirements for submission of annual survey data that are used to produce annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Entities" means any licensed hospital, licensed home health agency, licensed ambulatory surgery center, licensed hospice agency, licensed long term care facility, licensed private duty nursing agency, licensed psychiatric residential treatment facility, facility with megavoltage radiation equipment, facility with positron emission tomography equipment, or person or facility with magnetic resonance imaging equipment.

(4) "Exempt physicians" means physicians that operate a Magnetic Resonance Imaging unit pursuant to the exemption allowed in KRS 216B.020(2)(a).

(5) "Long term care facility" means any entity with licensed long term care beds including: nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for the mentally retarded, and personal care.

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(8) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. (1) The following entities shall submit annual surveys:

(a) Licensed Ambulatory Surgery Centers;

(b) Licensed Hospitals performing ambulatory surgery services or performing outpatient surgical services;

(c) Licensed Home Health Agencies;

(d) Licensed Hospice Agencies;

(e) Licensed Hospitals;

(f) Licensed Private Duty Nursing Agencies;

(g) Facilities with licensed long term care beds;

(h) Entities that hold a certificate of need for MRI equipment;

(i) Exempt Physicians that have MRI equipment;

(j) Facilities with Megavoltage Radiation equipment;

(k) Licensed Psychiatric Residential Treatment Facilities; and

(l) Facilities with Positron Emission Tomography equipment.

(2) An entity that did not perform any services or utilize specified equipment during the reporting year shall not be required to submit an annual survey.

Section 3. Annual Survey Submission. (1) An annual survey shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's website at http://chfs.ky.gov/ohp.

Section 4. Surveys shall be submitted annually as follows:

(1) Annual Survey of Licensed Ambulatory Surgical Services;

(2) Annual Survey of Licensed Home Health Services;

(3) Annual Survey of Hospice Providers;

(4) Annual Survey of Licensed Hospitals;

(5) Annual Survey of Licensed Private Duty Nursing Agencies;

(6) Annual Survey of Long Term Care Facilities;

(7) Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services;

(8) Annual Survey of Megavoltage Radiation Services;

(9) Annual Survey of Psychiatric Residential Treatment Facilities; and

(10) Annual Survey of Positron Emission Tomography (PET) Services.

Section 5. Annual surveys shall be completed no later than March 15th of each year. If the 15th falls on a weekend or holiday, the submission due date shall be the next working day.

Section 6. Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the administrator of the specific survey.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One extension per survey of up to 10 (ten) days shall be granted.

(4) Additional extensions shall only be granted if circumstances beyond the entity's control prevents timely completion of the surveys.

Section 7. Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of draft reports to facilities for their review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) The facilities shall be notified of a website and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review their data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) Facilities may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 8. Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually as follows:

(a) Kentucky Annual Ambulatory Surgical Services Report;

(b) Kentucky Annual Home Health Services Report;

(c) Kentucky Annual Hospice Services Report;

(d) Kentucky Annual Hospital Utilization and Services Report;

(e) Kentucky Annual Private Duty Nursing Agency Report;

(f) Kentucky Annual Long Term Care Services Report:

(g) Kentucky Annual Magnetic Resonance Imaging Services Report;

(h) Kentucky Annual Megavoltage Radiation Services Report;

(i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and

(j) Kentucky Annual Positron Emission Tomography Report.

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at http://chfs.ky.gov/ohp. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 9. Any facility that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(6).

Section 10. Magnetic Resonance Imaging Equipment Registration. (1) A new Magnetic Resonance Imaging unit (MRI) utilized in the Commonwealth shall be disclosed to the Cabinet for Health and Family Services.

(2) The following information shall be submitted by telephone contact and followed up in writing with the Office of Health Policy about every MRI unit utilized in the Commonwealth:

(a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;

(b) Identification of designated contact person or authorized agent of each facility;

(c) Make, model, and serial number of each unit;

(d) Date the unit became operational at each site; and

(e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational).

(3) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, shall have thirty (30) days after use of the unit is commenced to provide the information required by subsection (2) of this section.

(4) Within thirty (30) days of a change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units, the designated contact person or authorized agent shall notify the Office of Health Policy in writing.

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

(a) "2010 Annual Survey of Licensed Ambulatory Surgical Services";

(b) "2010 Annual Survey of Licensed Home Health Services";

(c) "2010 Annual Survey of Hospice Providers";

(d) "2010 Annual Survey of Licensed Hospitals";

(e) "2010 Annual Survey of Licensed Private Duty Nursing Agencies";

(f) "2010 Annual Survey of Long Term Care Facilities";

(g) "2010 Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services";

(h) "2010 Annual survey of Megavoltage Radiation Services"; "2010 Annual survey of Psychiatric Residential Treatment Facilities"; and

(i) "2010 Annual Survey of Positron Emission Tomography (PET) Services".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: November 9, 2010

FILED WITH LRC: November 15, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2010, at 9 a.m. in Meeting Room B located on the Third Floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 January 3, 2011. 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: Carrie Banahan or Chandra Venettozzi, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for completion of annual surveys and the requirement to register new Magnetic Resonance Imaging (MRI) units with the Office of Health Policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy for the orderly administration of the certificate of need 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 KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity required to submit annual surveys and an entity required to register a Magnetic Resonance Imaging unit. Approximately 800 entities complete a survey each 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: As the annual survey process and MRI registration process identified in the administrative regulation are already established for all facilities, no action will be required of regulated entities to comply with this regulation with the exception of Psychiatric Residential Treatment Facilities. These facilities are now required to complete annual surveys to submit data required by HB 231.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the annual survey process and the registration of MRI units identified in the administrative regulation are already established, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will provide specific instructions for submission of annual surveys and the requirement to register new Magnetic Resonance Imaging units with the Office of Health Policy for the administration of the certificate of need program.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these surveys and MRI registration process as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the annual survey process and registration of MRI units identified in the administrative regulation are already used as part of our normal operations so no additional funding will be 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 increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative establishes a $20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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 establishes a $20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately 40 reports will be purchased.

(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 establishes a $20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately 40 reports will be purchased.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 9, 2010

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 9, 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 October 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori and David Givens, and Representatives Leslie Combs, Robert Damron, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Joe R. Cowles, Personnel Cabinet; Devon Hankins, Travis Powell, Don Speer, Finance and Administration Cabinet; Steven Clark, Angela Evans, Frances Short, Licensing Board for Specialists in Hearing Instruments; Kellie Coldiron Ellis, Michael West, Board of Speech-Language Pathology and Audiology; Nathan Goldman, Charlotte Beason, Board of Nursing; Becky Klush, Board of Physical Therapy; James Grawe, Frances Short, Paul M. Wingate, Board of Licensure for Occupational Therapy; Timothy Roberson, Frances Short, Board of Licensed Professional Counselors; Margaret Everson, Rocky Prichert, Department of Fish and Wildlife Resources; Peter Goodmann, Abigail Powell, Division of Water; Sean Alteri, Millie Ellis, Lora Gowins, Laura Lund, John Lyons, Bruce Scott, Andrea Smith, Division for Air Quality; Amy Barker, Debra Kays, Jonathan Milby, Deparment of Corrections; Morgan Sprague, Department of State Police; Kimberly Whitley, Department of Justice; Ann D'Angelo, Godwin Onodu, Transportation Cabinet; Kevin Brown, Kay Kennedy; Clay Lamb, Allen Larson, Kathie Jane Regan, Patrick Shirley, Carol Weber, Mindy Yates, Education and Workforce Development Cabinet, Bob Elkins, Chuck Stibiling, Labor Cabinet; Gregory W. Goins, Johnny Greene, Office of Mine Safety; DJ Wasson, Department of Insurance; Chandra Venettozzi, Alicia Tindall, Division of Epidemiology and Health Planning.

The Administrative Regulation Review Subcommittee met on Tuesday, November 9, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

101 KAR 2:210 & E. 2011 Plan Year Handbook for the Public Employee Health Insurance Program. Joe R. Cowles, deputy executive director, Office of Legal Services, represented the cabinet.

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing

200 KAR 5:410. Preferences for purchases of commodities or services. Travis Powell, deputy general counsel, and Don Speer, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete 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 Section 2 to correct a drafting error. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Licensing Board for Specialists in Hearing Instruments: Board

201 KAR 7:075. Continuing education requirements. Steven Clark, board chair; Angela Evans, assistant attorney general; and Frances Short, executive director, Office of Occupations and Professions, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to add Section 9 to incorporate by reference the required form. Without objection, and with agreement of the agency, the amendments were approved.

Board of Speech-Language Pathology and Audiology: Board

201 KAR 17:030. License fees and renewal requirements. Kellie Coldiron Ellis, Chair; Frances Short, executive director, Office of Occupations and Professions; and Michael West, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to provide for biennial renewal of licensure; and (2) to amend Section 5 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. Charlotte Beason, executive director, and Nathan Goldman, general counsel, represented the board.

201 KAR 20:061. Doctor of Nursing Practice (DNP) degree.

In response to a question by Senator Givens, Mr. Goldman stated that the statute [KRS 164.298] did not recognize the accrediting board for nurse anesthetists. Because it was not recognized by statute, the nursing board could not recognize it by administrative regulation.

In response to questions by Representative Damron, Ms. Beason stated that approximately seventy-five (75) percent of states offered a doctorate of nursing. A nurse with a Doctor of Nursing Practice (DNP) degree practiced in a more complex realm of patient care and research. A DNP would have the same prescriptive and treatment authority as an Advanced Practice Registered Nurse. A statutory change was not required to expand the prescriptive and treatment authority to a DNP.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to revise a 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 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.

201 KAR 20:062. Standards for advanced practice registered nurse (ARPN) programs of nursing.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 through 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to add a new Section 12 to incorporate by reference the required documents. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board

201 KAR 22:070. Requirements for foreign-educated physical therapists. Becky Klusch, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Occupational Therapy: Board

201 KAR 28:010. Definitions and abbreviations. James Grawe, assistant attorney general; Frances Short, executive director, Office of Occupations and Professions, and Paul M. Wingate, board member, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 28:130. Supervision of occupational therapy assistants, occupational therapy students, and temporary permit holders.

A motion was made and seconded to approve the following amendments: to amend Section 7 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision. Timothy Robertson, chair; Frances Short, executive director, Office of Occupations and Professions; and Jim Grawe, assistant attorney general, represented the board.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. Margaret Everson, assistant attorney general, and Rocky Prichert, program coordinator, represented the department.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:100. Design, construction, and approval of facilities. Peter Goodmann, assistant director, and Julie Roney, director, Drinking Water Program, represented the division.

Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51. Sean Alteri, assistant director; John Lyons, director; and Bruce Scott, commissioner, represented the division. Rusty Cress, Jr., Dinsmore and Shohl, represented the Kentucky Association of Manufacturers and appeared in support of this administrative regulation and 401 KAR 52:001.

In response to questions by Senator Givens, Mr. Lyons stated that there was a finding in 2007 that U.S. EPA needed to reconsider the Clean Air Act to add provisions for greenhouse gases. Changes to the light-duty vehicle rule caused greenhouse gases to be defined as contaminants, which in turn triggered requirements for addressing greenhouse gas contaminants for major stationary sources of air pollution. Failure of Kentucky to implement the "Greenhouse Gas Tailoring Rule" may result in U.S. EPA assuming delegation over the Division for Air Quality's permitting program. In that event, there would be approximately three (3) months with a construction ban while U.S. EPA processed Kentucky's deficiency. Litigation attempting to overturn the 2007 finding was pending; however, it was essential that Kentucky continue in the process of amending these administrative regulations in order to prevent loss of state primacy. U.S. EPA allowed states some authority to interpret definitions for terms. These administrative regulations would allow Kentucky to have state-specific definitions, which have been upheld in recent court decisions. The impact would be minimal in terms of energy-efficiency requirements because most facilities had already implemented energy-efficiency technologies in order to save money. Mr. Alteri stated that the division had proposed a new definition for the term "subject to regulation" so that, if the 2007 finding were overturned, the division would no longer be required to enforce the "Greenhouse Gas Tailoring Rule."

In response to a question by Representative Damron, Mr. Cress stated that the federal government had not worked with Kentucky regarding the "Greenhouse Gas Tailoring Rule." Kentucky would be hard hit by a moratorium on construction if state delegation were lost; therefore, Kentucky needed to do what was required in order to continue to be the regulating body for the Division for Air Quality's programs. The "Greenhouse Gas Tailoring Rule" would cost between $10,000 and $25,000 for an engineer to review plans for permitting; however, the technology requirements would present the most cost to facilities.

Permits, Registrations, and Prohibitory Rules

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel; Debra Kays, internal policy analyst II; Jonathan Milby, staff attorney; and Kimberly Whitley, warden, represented the office.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:090. Frankfort Career Development Center.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Kentucky State Police: Sex Offender Registration System

502 KAR 31:020. Sex offender registration system. Morgain Sprague, counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add 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) amend Sections 3 through 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Motor Vehicle Tax

601 KAR 9:205. Titling of all-terrain vehicles. Ann D'Angelo, assistant general counsel, and Godwin Onodu, assistant director, represented the division.

In response to questions by Representative Lee, Mr. Onodu stated that all-terrain vehicles transferred into Kentucky and sold by nondealers were not required to have a title because some states did not require titling. The owner, not the dealer, had to be the person to apply for the title. Private sales owners would have less tax burden than owners of all-terrain vehicles purchased by Kentucky dealers; however, Mr. Onodu stated that the statute requires that it be done pursuant to this administrative regulation. The statute implicitly exempts certain all-terrain vehicles financed prior to July 1. The division agreed that the statute needed to be amended to close this loophole for all-terrain vehicles transferred into Kentucky and sold by nondealers.

A motion was made and seconded to approve the following amendments: to amend Section 1 to clarify applicability. Without objection, and with agreement of the agency, the amendments were approved.

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. Kevin Brown, general counsel, and Kay Kennedy, director, Division of District Support, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 through 5, 7, 8, 11, and 12 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 1 to clarify the definition for "district average certified teacher's salary"; and (4) to amend Section 3 to delete erroneous accounting codes listed for district-wide expenditures. Without objection, and with agreement of the agency, the amendments were approved.

Pupil Transportation

702 KAR 5:110. Vocational pupils, reimbursement for.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "vocational school"; (2) to amend Sections 2, 3, 7, 8, 9, and 12 through 16 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 15 to incorporate by reference the required form. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workforce Investment: Office of Vocational Rehabilitation: Administration

781 KAR 1:040. Rehabilitation technology services. Kathie Jane Regan, program administrator; Patrick Shirley, staff attorney; and Carol Webber, branch manager, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 3, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Employment and Training: Unemployment Insurance

787 KAR 1:320. Priority of deductions from benefits. Clay Lamb, staff attorney, and Allen Larson, director, Unemployment Insurance, 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; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to correct typographical errors. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:318. Electrical. Bob Elkins, safety standards specialist, and Chuck Stribling, federal - state coordinator, Office of Safety and Health, represented the division.

In response to a question by Senator Givens, Mr. Stribling stated that these administrative regulations redefined terms to reference the state counterparts of federal organizations. The only substantive changes were to the requirements regarding cranes and derricks.

803 KAR 2:400. Adoption of 29 C.F.R. 1926.1, 1926.4, and 1926.6.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY paragraph to correct statutory citations. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:402. General safety and health provisions.

803 KAR 2:411. Scaffolds.

803 KAR 2:412. Fall protection.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete a definition for a term that is not used in this administrative regulation; (2) to amend Section 3 for clarity; and (3) to add Section 4 to incorporate by reference the "Nonmandatory Sample Fall Protection Plan for Residential Construction." Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:413. Subpart N-helicopters, hoists, elevators, and conveyors.

803 KAR 2:414. Motor vehicles, mechanical equipment, and marine operations.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY paragraph to correct citations. Without objection, and with agreement of the agency, the amendment was approved.

Occupational Safety and Health

803 KAR 2:417. Steel erection.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the STATUTORY AUTHORITY paragraph and Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add 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 comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments

were approved.

803 KAR 2:419. Adoption of 29 C.F.R. Part 1926.850-860.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to insert citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend 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.

803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-960.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to insert citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 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.

803 KAR 2:423. Adoption of 29 C.F.R. Part 1926.1050-1060.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to insert citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS Chapter 13A; and (3) to amend 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.

803 KAR 2:430. Appendix A to 29 C.F.R. Part 1926.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 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.

803 KAR 2:505. Cranes and derricks in construction.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to insert a statutory citation; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:550. Cranes and derricks used in demolition and underground construction.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to insert a statutory citation; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department of Natural Resources: Office of Mine Safety and Licensing: Mining Safety Standards

805 KAR 3:100. Equipment use and operations. Gregory W. Goins, accident investigator, and Johnny Greene, executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend 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.

PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Life Insurance and Annuity Contracts

806 KAR 15:090. Notice of rights as an owner of a life insurance policy. D. J. Wasson, staff assistant, represented the division.

Division of Kentucky Access: Liability Self-insurance Groups

806 KAR 46:011. Repeal of 806 KAR 46:010.

806 KAR 46:040. Forms for application and financial statements.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers. Chandra Venettozzi, health data administrator, represented the office.

Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:060. Immunization schedules for attending day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools. Dr. Kraig Humbaugh, epidemiologist, and Alicia Tindall, immunization specialist, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add 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; (3) to amend the TITLE and Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 2(3)(a) to clarify TDAP immunization schedule requirements. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Healthcare Facilities Management: Medicaid Services

907 KAR 1:012 & E. Inpatient hospital service coverage. Trista Chapman, pharmacy coordinator, and Stuart Owen, regulation coordinator, represented the division. Teresa Camfield, executive director, Kentucky Medical Equipment Suppliers Association (KMESA), appeared in opposition to 907 KAR 1:479 & E.

In response to questions by Representative Lee, Mr. Owen stated that Medicaid would not reimburse a medical facility or doctor for treatment for a hospital-acquired illness. A medical facility or doctor would be unable to request payment from a patient for services for treatment for a hospital-acquired illness that was not payable by Medicaid.

Senator Givens thanked the division for working to reduce long-

term costs and minimize unintended consequences.

In response to a question by Representative Damron, Mr. Owen stated that the total savings for all efficiency measures approximated forty (40) to fifty (50) million dollars annually, including federal and state savings.

Representative Lee stated that, while there were potential savings from the efficiency measures, there was also a potential loss to medical facilities and doctors until best medical practices eliminated hospital-acquired illnesses.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Sections 1 through 4 and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 4 to specify that hospitals shall not seek payment for, rather than bill, for treatments for or related to never events. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:015 & E. Payments for outpatient services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 6, and 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 9 to change the edition dates of the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:019 & E. Outpatient pharmacy program.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 9, 11, and 13 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 4 to specify requirements for pharmacists when prescribers telephone prescriptions; (5) to amend Section 5 to specify how to determine costs; (6) to amend Section 6 to allot the same timeframes for individuals as drug manufacturers for presenting to the Drug Management Review Advisory Board; (7) to amend Section 13 to update one of the forms incorporated by reference; and (8) to amend Section 2(5) to establish when the department shall cover diabetic supplies under the department's pharmacy program and under the durable medical equipment program. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:479 & E. Durable medical equipment covered benefits and reimbursement.

Ms. Camfield stated that the submission process for reimbursement for diabetic supplies through a pharmacy instead of through a durable medical equipment vendor was incomplete and that currently a durable medical equipment vendor without a pharmacy could not process rebates because the system of codes had not been established. Mr. Owen stated that the division was working on a new system of codes for durable medical equipment vendors, but he could not give the Subcommittee a time frame when that would be usable. During the period of time until that system was established, it was possible that durable medical equipment vendors may lose patients to pharmacies that had the benefit of an existing system of codes.

In response to a question by Representative Damron, Mr. Owen stated that this administrative regulation did not prohibit durable medical equipment vendors from submitting claims for reimbursement for diabetic supplies, but the technological system was not yet in place to do the processing. The division agreed to defer; however, the emergency administrative regulation would expire before the ordinary administrative regulation could become effective if the division deferred. Mr. Owen agreed to amend this administrative regulation at the December meeting of the Interim Joint Committee on Appropriations and Revenue to provide for reimbursement for the durable medical equipment vendors.

Ms. Chapman stated that, if Medicaid paid for a diabetic supply, the recipient had to have a prescription for the diabetic supply. Nonmedicaid buyers did not have to present a prescription to purchase diabetic supplies. The computer software inadequacies were what was currently delaying the division's ability to process reimbursements for durable medical equipment vendors without a pharmacy.

A motion was made and seconded to defer consideration of this administrative regulation, and the division agreed; however, a motion was made and seconded to withdraw the previous motion to defer because the division had agreed to amend this administrative regulation at the December meeting of the Interim Joint Committee on Appropriation and Revenue.

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 Sections 1, and 6 through 11 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to incorporates by reference an updated Medicaid DME Program Fee Schedule to conform to the changes made in these administrative regulations relating to reimbursement for diabetic supplies and prior authorization requirements; (4) to amend Section 2 to require that a supplier shall have an order from a prescriber before dispensing any DMEPOS item to a recipient and shall have a written order on file prior to submitting a reimbursement claim; and (5) to amend Section 6 to establish when the department shall cover diabetic supplies under the department's pharmacy program and under the durable medical equipment program. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:677 & E. Medicaid recipient lock-in program.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 1, 2, 4 through 9, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 11 to incorporate by reference an updated referral form. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:825 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend Sections 1, 2, 3, 10, 14, 15, and 18 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 3 to specify that hospitals shall not seek payment for, rather than bill, for treatments for or related to never events. Without objection, and with agreement of the agency, the amendments were approved.

Division of Community Alternatives: Payment and Services

907 KAR 3:090 & E. Acquired brain injury waiver services.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 through 4, 6 through 9, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Sections 3, 7, 8, and 11 to correct the titles of material incorporated by reference; and (4) to amend Section 11 to incorporate by reference required documents. Without objection, and with agreement of the agency, the amendments

were approved.

907 KAR 3:100 & E. Reimbursement for acquired brain injury waiver services.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 5, 7 and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the December 14, 2010, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

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, 8:70, and 8:490.

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

201 KAR 8:500 & E. Board organization.

201 KAR 8:510 & E. Advisory opinions.

201 KAR 8:520 & E. Fees and fines.

201 KAR 8:530 & E. Licensure of dentists.

201 KAR 8:540 & E. Dental practices.

201 KAR 8:560 & E. Licensure of dental hygienists.

Board of Licensed Professional Counselors: Board

201 KAR 36:070. Education requirements.

Board of Licensure for Private Investigators: Board

201 KAR 41:100. Verification of 240 hour employees.

DEPARTMENT OF AGRICULTURE: Office of State Veterinarian: Division of Animal Health: Livestock Sanitation

302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky.

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:018 & E. Special overweight or overdimensional permits.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:009 & E. Jockeys and apprentices.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:026 & E. Racing associations.

810 KAR 1:120. Exotic wagering.

810 KAR 1:130. Post-race sampling and testing procedures.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:220. Harness racing at county fairs.

811 KAR 1:250. Exotic wagering.

811 KAR 1:260. Postrace sampling and testing procedures.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

811 KAR 2:170. Postrace sampling and testing procedures.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:100. Joints and connections.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Adult and Child Health Improvement: Kentucky Early Intervention System

902 KAR 30:001 & E. Definitions.

902 KAR 30:110 & E. Point of entry and service coordination.

902 KAR 30:120 & E. Evaluation and eligibility.

902 KAR 30:130 & E. Assessment, service planning, and assistive technology.

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170.

902 KAR 30:150 & E. Personnel qualification.

902 KAR 30:160 & E. Covered services.

902 KAR 30:180 & E. Procedural safeguards.

902 KAR 30:200 & E. Coverage and payment for services.

The subcommittee adjourned at 2:30 p.m. until December 14, 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 November 4, 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 November 4, 2010, having been referred to the Committee on November 3, 2010, pursuant to KRS 13A.290(6):

301 KAR 2:251

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 November 4, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of November 17, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of November 17, 2010, having been referred to the Committee on November 3, 2010, pursuant to KRS 13A.290(6):

109 KAR 15:020
815 KAR 7:110

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 November 17, 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 **F - 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 **F - 11**

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 **F - 20**

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 **F - 21**

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.

LOCATOR INDEX - EFFECTIVE DATES

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.)

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
Replaced		(See 37 Ky.R.)
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
Replaced		(See 37 Ky.R.)
810 KAR 1:037E	2165	3-17-10
Replaced		(See 37 Ky.R.)
810 KAR 1:100E		
Resubmitted	2168	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 1:037E	2169	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 1:070E		
Resubmitted	2023-*M*	1-15-10
811 KAR 1:230		
Resubmitted	2172	3-17-10
Replaced		(See 37 Ky.R.)
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
Expired		

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:145		
Amended	1508	
11 KAR 12:060		
Amended	2055-*A*	7-12-2010
13 KAR 1:020		
Amended	2347	9-3-10
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	
Withdrawn	**	Date
201 KAR 10:050		
Amended	1301	
As Amended	2047-*M*	
Withdrawn		7-8-10
201 KAR 16:030		
Amended	2353	
Withdrawn		11-5-10
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*	8-5-10
401 KAR 5:075		(See 37 Ky.R.)
Amended	2119-*M*	
Amended	2339	

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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.)
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	(See 37 Ky.R.)
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	(See 37 Ky.R.)
503 KAR 3:040		
Amended	2379	(See 37 Ky.R.)
503 KAR 3:110		
Amended	2383	(See 37 Ky.R.)
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	*(See 37 Ky.R.)*
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	
815 KAR 8:070	2004	
As Amended	2194	6-4-10
815 KAR 8:080	2006	
Amended	2048-*A*	
As Amended	2195	6-4-10
815 KAR 8:090	2008	
As Amended	2196	6-4-10
815 KAR 10:060		
Reprint	1857	
815 KAR 20:018	2271	(See 37 Ky.R.)
815 KAR 20:050		
Amended	1134	
As Amended	2067-*M*	6-4-10
815 KAR 20:191		
Amended	2135-*M*	
As Amended	2327	(See 37 Ky.R.)
815 KAR 2	5:080	
Amended	2114-*A*	
As Amended	2333	
900 KAR 5:020		
Amended	2255	(See 37 Ky.R.)
900 KAR 6:020		
Amended	2256	(See 37 Ky.R.)
900 KAR 6:060		
Amended	2258	(See 37 Ky.R.)
900 KAR 6:125	260	
Withdrawn		11-13-09
902 KAR 20:400	1572	
Amended	2049-*A*	(See 37 Ky.R.)
906 KAR 1:180	1403	
Amended	2103-*M*	
As Amended	2197	6-4-10
910 KAR 1:240		
Amended	2391	(See 37 Ky.R.)
910 KAR 1:260		
Amended	1997	
As Amended	2201	6-4-10
921 KAR 1:410		
Amended	2395	(See 37 Ky.R.)

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 4:130E	4	6-15-10
Replaced	680	10-1-10
31 KAR 4:140E	6	6-15-10
Replaced	682	10-1-10
32 KAR 1:030E	1381	11-2-10
32 KAR 1:190E	1382	11-2-10
101 KAR 2:210E	916	9-15-10
101 KAR 5:015E	211	7-13-10
Withdrawn		8-13-10
Resubmitted	664	8-13-10
102 KAR 1:320E	212	7-15-10
102 KAR 1:330E	215	7-15-10
105 KAR 1:190E	217	7-15-10
201 KAR 8:007E	224	7-15-10
201 KAR 8:390E	225	7-15-10
201 KAR 8:500E	228	7-15-10
201 KAR 8:510E	231	7-15-10
201 KAR 8:520E	233	7-15-10
201 KAR 8:530E	235	7-15-10
201 KAR 8:540E	239	7-15-10
201 KAR 8:560E	241	7-15-10
201 KAR 8:570E	245	7-15-10
Withdrawn		10-15-00
201 KAR 8:580E	248	7-15-10
Withdrawn		9-14-10
201 KAR 39:050E	250	6-16-10
Replaced	444	11-5-10
301 KAR 2:221E	1158	10-15-10
301 KAR 2:222E	1160	10-15-10
301 KAR 2:225E	917	8-18-10
302 KAR 20:115E	252	7-2-10
Replaced	955	10-13-10
302 KAR 21:005E	254	7-2-10
Replaced	955	10-13-10
405 KAR 8:010E		(See 36 Ky.R.)
Replaced	689	9-2-10
503 KAR 1:110E	9	6-10-10
601 KAR 1:018E	666	8-12-10
702 KAR 7:130E	255	6-23-10
Replaced	969	10-6-10
803 KAR 25:091E	920	9-15-10
810 KAR 1:009E	13	6-15-10
815 KAR 1:025E		(See 36 Ky.R.)
Replaced	363	9-3-10
810 KAR 1:026E	18	6-15-10
810 KAR 1:037E		(See 36 Ky.R.)
Replaced	369	9-3-10
810 KAR 1:100E		(See 36 Ky.R.)
Replaced	371	9-3-10
810 KAR 1:110E	923	9-15-10
811 KAR 1:037E		(See 36 Ky.R.)
Replaced	372	9-3-10
811 KAR 1:230		(See 36 Ky R.)
Replaced	372	9-3-10
811 KAR 1:240E	927	9-15-10
811 KAR 2:150E	931	9-15-10
811 KAR 2:020E	22	6-15-10
811 KAR 2:130E		(See 36 Ky.R.)
Replaced	374	9-3-10
811 KAR 2:140E	30	6-15-10
900 KAR 5:020E	1384	10-18-10
900 KAR 6:060E	1385	10-18-10
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902 KAR 30:180E	286	7-15-10
902 KAR 30:200	289	7-15-10
902 KAR 45:005E	939	9-8-10
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902 KAR 45:110E	942	9-8-10
Withdrawn		10-18-10
907 KAR 1:012E	295	7-1-10
907 KAR 1:014E	298	7-1-10
907 KAR 1:015E	302	7-1-10
907 KAR 1:019E	305	7-1-10
907 KAR 1:479E	312	7-1-10
907 KAR 1:677E	318	7-1-10
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907 KAR 3:090E	333	7-1-10
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907 KAR 3:215E	1164	10-1-10
907 KAR 5:005E	352	7-1-10
921 KAR 2:040E	672	7-23-10
921 KAR 3:030E	674	7-23-10

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4 KAR 1:010	872	
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4 KAR 1:020	873	
4 KAR 1:030	875	
4 KAR 1:040	877	
As Amended	1168	
11 KAR 3:100		
Amended	71	10-1-10
11 KAR 5:145		
Amended	84	10-1-10
16 KAR 2:150		
Amended	1317	
16 KAR 3:050		
Amended	1500	
16 KAR 6:010		
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16 KAR 6:020		
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Amended	89	
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31 KAR 4:130		
Amended	91	
As Amended	680	10-1-10
31 KAR 4:140		
Amended	94	
As Amended	682	10-1-10
32 KAR 1:030		
Amended	1502	
32 KAR 1:190		
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102 KAR 1:230		
Amended	1323	
102 KAR 1:245		
Amended	1327	
102 KAR 1:320	606	
Amended	989	
As Amended	1170	
102 KAR 1:330	609	
As Amended	1172	
103 KAR 3:020		
Amended	755	
As Amended	1172	
103 KAR 3:050		
Amended	760	
103 KAR 15:180	1107	
Amended	1490	
103 KAR 18:070		
Amended	409	
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103 KAR 31:102	611	
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105 KAR 1:190		
Amended	410	
As Amended	945	11-5-10
105 KAR 1:370		
Amended	99	
As Amended	683	10-1-10
106 KAR 2:020		
Amended	417	
As Amended	1177	
107 KAR 2:010		
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109 KAR 15:020		
Amended	767	
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200 KAR 5:400	1109	
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201 KAR 1:065		
Amended	1507	
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201 KAR 2:165		
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201 KAR 2:330	612	
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201 KAR 7:075		
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201 KAR 17:030		
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201 KAR 8:006		
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201 KAR 8:070		
Repealed	224	7-15-10
201 KAR 8:130		
Repealed	224	7-15-10
201 KAR 8:135		
Repealed	224	7-15-10
201 KAR 8:140		
Repealed	224	7-15-10
201 KAR 8:150		
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201 KAR 8:180		
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201 KAR 8:185		
Repealed	224	7-15-10
201 KAR 8:190		
Repealed	224	7-15-10
201 KAR 8:220		
Repealed	224	7-15-10
201 KAR 8:225		
Repealed	224	7-15-10
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201 KAR 8:290		
Repealed	224	7-15-10
201 KAR 8:310		
Repealed	224	7-15-10
201 KAR 8:320		
Repealed	224	7-15-10
201 KAR 8:330		
Repealed	224	7-15-10
201 KAR 8:340		
Repealed	224	7-15-10
201 KAR 8:345		
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201 KAR 8:350		
Repealed	224	7-15-10
201 KAR 8:355		
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Repealed	224	7-15-10
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201 KAR 8:440		
Repealed	224	7-15-10
201 KAR 8:450		
Repealed	224	7-15-10
201 KAR 8:460		
Repealed	224	7-15-10
201 KAR 8:470		
Repealed	224	7-15-10
201 KAR 8:480		
Repealed	224	7-15-10
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201 KAR 8:510	616	
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201 KAR 18:150		
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As Amended	1415	
201 KAR 20:070		
Amended	423	10-20-10
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201 KAR 20:162		
Amended	428	10-20-10
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201 KAR 20:225		
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201 KAR 20:370		
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201 KAR 20:411		
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201 KAR 20:470		
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201 KAR 20:510		(See 36 Ky.R.)
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201 KAR 22:020		
Amended	775	
201 KAR 22:045		(See 36 Ky.R.)
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201 KAR 22:053		
Amended	776	
As Amended	1184	
201 KAR 22:135		(See 36 Ky.R.)
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Amended	1523	
201 KAR 26:180		
Amended	1526	
201 KAR 26:185		
Amended	1527	
201 KAR 26:190		
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Amended	444	11-5-10
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Amended	787	
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201 KAR 40:070		
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201 KAR 40:080		
Amended	791	
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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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