

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 38, NUMBER 6
THURSDAY, DECEMBER 1, 2011

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MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is **ten-**
tatively scheduled to meet December 6, 2011 at 1:00 p.m. in
room 149 Capitol Annex. See **tentative agenda** on pages **1085-**
1086 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2011 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 38, Kentucky Register, page 318 (short form: 38 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
TENTATIVE AGENDA, DECEMBER 6, 2011, at 1:00 p.m., Room 149 Capitol Annex**

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky. (Amended After Comments)

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 2:180. Employee performance evaluation system. (Deferred from October)

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Office of Sales and Excise Taxes

Forms

103 KAR 3:020. Sales and Telecommunications Forms Manual.

Office of Property Valuation

Ad Valorem Tax; State Assessment

103 KAR 8:010. Watercraft allocation. (Not Amended After Comments) (Deferred from September)

GENERAL GOVERNMENT CABINET

Board of Pharmacy

Board

201 KAR 2:170. Computerized recordkeeping. (Not Amended After Comments)

Real Estate Appraisers Board

Board

201 KAR 30:310 & E. Fees for registration of appraisal management companies. ("E" expires 2/10/12) (Amended After Comments) (Deferred from November)

201 KAR 30:320 & E. Surety bond. ("E" expires 2/10/12) (Not Amended After Comments) (Deferred from November)

201 KAR 30:330 & E. Application for registration. ("E" expires 2/10/12) (Deferred from October)

201 KAR 30:360. Operation of an appraisal management company. (Amended After Comments) (Deferred from November)

Board of Licensed Professional Counselors

Board

201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:070. Education and examination requirements.

Board of Interpreters for the Deaf and Hard of Hearing

Board

201 KAR 39:011. Definitions.

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

201 KAR 39:040. Fees.

201 KAR 39:050. Renewal of licenses, extension of temporary licenses and reinstatement.

201 KAR 39:060. Reinstatement of license subject to disciplinary action.

201 KAR 39:070. Application and qualifications for temporary licensure.

201 KAR 39:080. Reciprocity.

201 KAR 39:090. Continuing education requirements.

201 KAR 39:100. Complaint procedure.

201 KAR 39:120. Code of ethics.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 2:142. Spring wild turkey hunting.

301 KAR 2:221 & E. Waterfowl seasons and limits. ("E" expires 3/18/2012)

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands. ("E" expires 3/18/2012)

Department of Parks

Parks and Campgrounds

304 KAR 1:070. Kentucky Proud™ Promotion Program.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Reclamation and Enforcement

Surface Effects of Noncoal Mining

405 KAR 5:085. Enforcement. (Amended After Comments) (Deferred from November)

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions. (Amended After Comments) (Deferred from November)

General Provisions

405 KAR 7:091. General practice provisions. (Amended After Comments) (Deferred from November)

Inspection and Enforcement

405 KAR 12:020. Enforcement. (Amended After Comments) (Deferred from November)

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Parole Board

Board

501 KAR 1:080. Parole Board policies and procedure. (Not Amended After Comments)

Department of State Police

Concealed Deadly Weapons.

502 KAR 11:020. Applicant photograph requirements for license to carry concealed deadly weapon.

TRANSPORTATION CABINET
Office of the Secretary
Office of Audits

Professional Engineering and Related Services

600 KAR 6:080. Financial records and audit or other engagement of firms.

Department of Highways

Traffic

603 KAR 5:050. Uniform traffic control devices.

Office of Transportation Delivery

Mass Transportation

603 KAR 7:080. Human service transportation delivery. (Amended After Comments) (Deferred from October)

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

Alternate Education Programs

704 KAR 19:001. Alternative Education Programs.

PUBLIC PROTECTION CABINET
Department of Insurance

Financial Standards and Examination Division

Authorization of insurers and general requirements

806 KAR 3:190. Risk-based capital for insurers.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support

Food Stamp Program

921 KAR 3:030. Application process.

Division of Protection and Permanency

Child Welfare

922 KAR 1:420. Child fatality or near fatality investigations. ("E" expired 7/2/2011) (Deferred from March)

REMOVED FROM DECEMBER 2011 AGENDA

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board

Board

201 KAR 30:375. Fees paid to appraisers. (Comments Received)

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

Game

301 KAR 2:082. Transportation and holding of exotic wildlife. (Comments Received)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management

Medicaid Services

907 KAR 1:018 & E. Reimbursement for drugs. ("E" expires 3/31/2012) (Comments Received)

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, 2011

GENERAL GOVERNMENT
Department of Agriculture
Office of State Veterinarian Division of Animal Health
(Emergency Amendment)

302 KAR 20:052E. Animal carcass composting.

RELATES TO: KRS 257.010, 257.160(1)-(2)

STATUTORY AUTHORITY: KRS 257.160(3)

EFFECTIVE: November 10, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160(3) authorizes the State Board of Agriculture to promulgate administrative regulations to implement KRS 257.160. KRS 257.160(1)(f) allows disposal of animal carcasses by composting if the disposal is performed in an approved facility and according to the board's administrative regulations. This administrative regulation establishes required procedures for animal carcass composting.

Section 1. Definitions. (1) "Agriculture operation" is defined by KRS 224.71-100(1).

(2) "Animal" means fish and any member of the equine, ovine, bovine, porcine, [feline, canine,] caprine, [lapin,] bison, cervidae, camelid[camalid], ratite, and avian species.

(3)[(2)] "Compost" is defined by KRS 257.010(6)[(5)].

(4)[(3)] "Owner" is defined by KRS 257.010(14)[(12)].

Section 2. Registration [Permit] Required. (1) Except as provided in subsection (5) of this section, all persons or entities operating a composting facility shall register with the State Veterinarian. ~~[The State Veterinarian shall issue permits for animal composting facilities. The cost of the permit shall be twenty-five (25) dollars per year. The permit shall be renewed at five (5) year intervals.]~~

(2) Registration~~[A permit application]~~ shall include the name and address of the compost owner, the location of the composting facilities, and a description of the facilities ~~[and composting procedure]~~.

(3) All animal composting facilities shall be subject to inspection by the State Veterinarian or his representative.

(4) Any animal carcasses not composted shall be disposed of in a manner consistent with KRS 257.160.

(5) Registration of composting facilities shall not be required for an agriculture operation, if composting is not for a commercial purpose.

Section 3. Composting~~[Permitted]~~ Facilities. (1) All composting~~[permitted]~~ facilities shall be constructed to meet:

(a) Guidelines established by the University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166"; and

(b) The requirements of the Kentucky Agriculture Water Quality Plan.

(2) All processing of dead animals shall be done within the composting~~[permitted]~~ facility.~~[(3) Dead animals to be composted shall be temporarily stored indoors on floors constructed of concrete or soil-cement as identified in the University of Kentucky College of Agriculture Cooperative Extension Service publication "Using Soil-Cement on Horse and Livestock Farms: ID-176".]~~

(3)[(4)] Hazardous materials shall not be used in the composting procedure.

(4)[(5)] Reasonable and cost-effective efforts shall be taken to prevent odor, insects, and pests. All carcasses shall be inaccessible to scavengers, livestock, and live poultry.

(5)[(6)] Ruminant animals may have the rumen vented prior to composting.

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

(a) University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166", 2-2008; and

(b) Kentucky Agriculture Water Quality Plan (October 1996, revised May 1999); and

~~(c) University of Kentucky College of Agriculture Cooperative Extension Service publication "Using Soil-Cement on Horse and Livestock Farms: ID-176", 8-2009].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 100 Fair Oaks, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: November 10, 2011

FILED WITH LRC: November 10, 2011 at 11 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides requirements for composting animal carcasses in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.160(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by administering KRS 257.160(3) though establishing and modifying composting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the composting requirements for animals in the state. This regulation will make it easier for the animal owner to compost the animal by not having to seek a permit and have a site visit prior to operation.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation eliminates the need for a permit, and the charge to obtain a permit. This amendment reduces the regulatory burden on animal owners.

(b) The necessity of the amendment to the administrative regulation: This amended regulation changes eliminates the need for the KDA to inspect the site prior to the composting process. Due to staff workload and funding, this change is necessary.

(c) How this amendment conforms to the content of the authorizing statutes: The amendments conform to the statutes by establishing composting requirements.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation makes the changes necessary to keep composting requirements current with needed animal health protection. The changes shift the role of the KDA to complaint response and compliance assistance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture and animal producers in the state who may chose to compost rather than use other disposal methods.

(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: Animal producers may elect to compost at their option. Should they do so they must comply with the regulation. The owners of the deceased animals will have a reduced burden by not having to seek a permit or pay for the permit fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Animal producers may elect to compost at their option. The fee for a permit is eliminated; therefore the costs will be zero.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment saves the producer time in applying for a permit, and eliminates costs for composting.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDA general funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The fee has been eliminated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee has been eliminated; therefore no direct or indirect fees are applicable to the owners of animal carcasses.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture will be impacted as the program requirements are changing to be less cumbersome to the producer.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.160

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero. The fee for this program is being eliminated.

(b) How 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? Because the KDA role will be response driven, an estimate cannot be provided. The costs incurred will be less than current expenditures that are paid for out of general agency funds.

(d) How much will it cost to administer this program for subsequent years? Because the KDA role will be response driven, an estimate cannot be provided. The costs incurred will be less than current expenditures that are paid for out of general agency funds.

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 900 KAR 7:030E

This emergency administrative regulation is being promulgated to incorporate by reference new data reporting manuals for use by hospitals and ambulatory facilities when submitting administrative claims data to the Cabinet for Health and Family Services, Office of Health Policy. Changes to the manuals are necessary as new payor codes will be needed to identify claims billed to the three new Medicaid Managed Care Organizations when they become

operational in November, 2011. These new payor codes are necessary so that the most accurate data is available when analysis and reports are produced related to the cost, quality, and outcomes of health care services provided in the Commonwealth. An ordinary administrative regulation is not sufficient because the changes are necessary so that accurate data may be collected from the time of implementation of the Managed Care Organizations. Failure to enact this administrative regulation on an emergency basis will compromise the data necessary to provide data related to the cost, quality, and outcomes of health care services provided in the Commonwealth. 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 7:030E. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

EFFECTIVE: October 28, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for:

(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds; or

(b) Hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Ken-

tucky Data Coordinator's Manual for Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient services they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of this administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

tal.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Hospitals. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

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(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

Section 8. Data Corrections for Ambulatory Facilities. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

Section 9. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 10. Extension or Waiver of Data Submission Timelines. (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data report-

ing period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 11. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 12. Working Contacts for Providers. (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 13. Required Data Elements for Hospitals. (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date

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Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCP/PCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

Section 14. Required Data Elements for Ambulatory Facilities. (1) Ambulatory facilities shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Additional data elements, as specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill

Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCP/PCS/Rates/Hipps Rate Codes

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised October 31, 2011[April 1, 2014]; and
(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised October 31, 2011[April 1, 2014].

(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 4WE, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 900 KAR 7:030.

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 25, 2011

FILED WITH LRC: October 28, 2011 at 4 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 Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated manuals for both hospitals and ambulatory facilities. Revisions to the manual were necessary due to the addition of three payor codes to identify the new Medicaid Managed Care Organizations that will begin operation November 1, 2011. Also, at the request of facilities, three additional payor codes were added to identify the payors Veterans Administration, Auto, and Other Facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the cabinet to publish the data as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative

trative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with 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: This administrative regulation incorporates by reference updated data reporting manuals. Updated manuals are necessary as newly created payor codes needed to be incorporated into the manuals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide new data submission manuals to facilities that submit data so that newly created payor codes are included in the manual.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by providing a standardized method of reporting by facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions on how to submit required data elements.

(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 approximately 185 hospitals and ambulatory facilities that submit data to the Cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to include newly created payor codes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to include newly created payor codes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Data integrity is improved as all applicable payor codes are now included in the manuals.

(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 administrative regulation as the office of Health Policy currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional costs will be incurred.

(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. No new funding will be needed to implement the provisions of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding 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: The administrative regulation does not establish any fees directly or indirectly 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 and the state operated hospital facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2920-216.2929.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 907 KAR 17:005E

This emergency administrative regulation is being promulgated to establish the Kentucky Medicaid Program managed care policies and requirements for every Medicaid managed care region in Kentucky except for region three (3.) Region three (3) is comprised of Jefferson County and fifteen (15) other counties neighboring or nearby Jefferson County. Under managed care, each Medicaid recipient (except for those excluded from managed care participation) residing outside of region three (3) will be given a choice of enrolling with one (1) of three (3) managed care organizations (MCOs) for the purpose of receiving Medicaid services and benefits. Transforming the majority of the Medicaid Program from a fee-for-service model into a managed care model is necessary to improve quality of care, facilitate access to care and to effectively manage costs. This action must be implemented on an emergency basis to sustain the viability of the Medicaid program and to prevent funding cuts to other agencies within the executive branch. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Commissioner's Office (New Emergency Administrative Regulation)

907 KAR 17:005E. Managed care organization requirements and policies.

RELATES TO: 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3),

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194A.030 (2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

EFFECTIVE DATE: October 28, 2011

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 to qualify for federal Medicaid funds. This administrative regulation establishes the policies and procedures relating to the provision of Medicaid services through contracted managed care organizations pursuant to, and in accordance with, 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438.

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid Program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(3) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(4) "Aged" means at least sixty-five (65) years of age.

(5) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(6) "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance abuse disorder.

(7) "Blind" is defined by 42 U.S.C. 1382c(a)(2).

(8) "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

(9) "Capitation rate" means the negotiated amount to be paid on a monthly basis by the department to an MCO:

(a) Per enrollee; and

(b) Based on the enrollee's aid category, age, and gender.

(10) "Care coordination" means the integration of all processes in response to an enrollee's needs and strengths to ensure the:

(a) Achievement of desired outcomes; and

(b) Effectiveness of services.

(11) "Case management" means a collaborative process that:

(a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;

(b) Is characterized by advocacy, communication, and resource management; and

(c) Promotes quality and cost-effective interventions and outcomes.

(12) "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.

(13) "Child" means a person who:

(a)1. Is under the age of eighteen (18) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D); or

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.

(14) "Chronic Illness and Disability Payment System" is a diagnostic classification system that Medicaid programs can use to make health-based, capitated payments for TANF and disabled

Medicaid beneficiaries.

(15) "Commission for Children with Special Health Care Needs" or "CCSHCN" means the Title V agency which provides specialty medical services for children with specific diagnoses and health care needs that make them eligible to participate in programs sponsored by the CCSHCN, including the provision of medical care.

(16) "Community mental health center" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

(17) "Consumer Assessment of Healthcare Providers and Systems" or "CAHPS" means a program that develops standardized surveys that ask consumers and patients to report on and evaluate their experiences with health care.

(18) "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.

(19) "DAIL" means the Department for Aging and Independent Living.

(20) "DCBS" means the Department for Community Based Services.

(21) "Department" means the Department for Medicaid Services or its designee.

(22) "Disabled" is defined by 42 U.S.C. 1382c(a)(3).

(23) "DSM-IV" means a manual published by the American Psychiatric Association that covers all mental health disorders for both children and adults.

(24) "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.

(25) "Early and periodic screening, diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(26) "Emergency services" is defined by 42 U.S.C. 1396u-2(b)(2)(B).

(27) "Encounter" means a health care visit of any type by an enrollee to a provider of care, drugs, items, or services.

(28) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(29) "External quality review organization" or "EQRO":

(a) Is defined by 42 C.F.R. 438.320; and

(b) Includes any affiliate or designee of the EQRO.

(30) "Family planning service" means a counseling service, medical service, or a pharmaceutical supply or device to prevent or delay pregnancy.

(31) "Federally-qualified health center" or "FQHC" is defined by 42 C.F.R. 405.2401(b).

(32) "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(33) "Foster care" means the DCBS program which provides temporary care for a child:

(a) Placed in the custody of the Commonwealth of Kentucky; and

(b) Who is waiting for a permanent home.

(34) "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 – KRS 205.8483.

(35) "Grievance" is defined by 42 C.F.R. 438.400.

(36) "Grievance system" means a system that includes a grievance process, an appeal process, and access to the Commonwealth of Kentucky's fair hearing system.

(37) "Healthcare Effectiveness Data and Information Set" or "HEDIS" means a tool used to measure performance regarding important dimensions of health care or services.

(38) "Health maintenance organization" is defined by KRS 304.38-030(5).

(39) "Health risk assessment" or "HRA" is a health questionnaire used to provide individuals with an evaluation of their health risks and quality of life.

(40) "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide

temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

(d) Is an individual who lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.

(43) "Individual with a special health care need" or "ISHCN" means an individual who:

(a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and

(b) May require a broad range of primary, specialized, medical, behavioral health, or related services.

(41) "Initial implementation" means the process of transitioning a current Medicaid or KCHIP recipient from fee-for-service into managed care.

(42) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(43) "Kentucky Health Information Exchange" or "KHIE" means the name given to the system that will support the statewide exchange of health information among healthcare providers and organizations according to nationally-recognized standards.

(44) "Knowingly" is defined by KRS 205.8451(5).

(45) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as managed care organization as defined in 42 C.F.R. 438.2.

(46) "Maternity care" means prenatal, delivery and postpartum care and includes care related to complications from delivery.

(47) "Mandatory enrollment" means the requirement that a recipient enroll in managed care.

(48) "Marketing" means any activity conducted by or on behalf of an MCO in which information regarding the services offered by the MCO is disseminated in order to educate enrollees or potential enrollees about the MCO's services.

(49) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 1:640; and

(e) Meets the resource standards established in 907 KAR 1:645.

(50) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(51) "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

(52) "Medicare qualified individual group 1 (QI-1)" means an eligibility category, in which pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a Qualified Medicare beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who are not otherwise eligible for Medicaid under the state plan.

(53) "National Practitioner Data Bank" is an electronic repository that collects:

(a) Information on adverse licensure activities, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists and other practitioners; and

(b) Data on payments made on behalf of physicians in connection with liability settlements and judgments.

(54) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements.

(55) "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing

facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and 482.66.

(56) "Olmstead decision" means the court decision of *Olmstead v. L.C. and E.W.*, U.S. Supreme Court, No. 98-536, June 26, 1999 in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

(57) "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

(58) "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

(59) "Physician" is defined by KRS 311.550(12).

(60) "Post stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrollee's condition.

(61) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.

(62) "Primary care provider" means a licensed or certified health care practitioner who meets the description as established in Section 7(6) of this administrative regulation.

(63) "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

(64) "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

(64) "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

(65) "Quality improvement" or "QI" means the process of assuring that covered services provided to enrollees are appropriate, timely, accessible, available, and medically necessary and the level of performance of key processes and outcomes of the healthcare delivery system are improved through the MCO's policies and procedures.

(66) "Qualified alien" means an individual who is lawfully admitted into the United States of America for permanent residence under Title 8 of the United States Code (The Immigrant and Nationality Act) including:

(a) An asylee;

(b) A refugee;

(c) An individual who:

1. Has been paroled into the United States of America for a period of one (1) year;

2. Has had his or her deportation withheld;

3. Has been granted conditional entry into the United States of America; or

4. Is a Cuban or Haitian entrant who was receiving Medicaid benefits on August 22, 1996; or

(d) A battered immigrant.

(67) "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(68) "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(69) "Recipient" is defined in KRS 205.8451(9),

(70) "Risk adjustment" means a corrective tool to reduce both the negative financial consequences for a managed care organization that enrolls high-risk users and the positive financial consequences for a managed care organization that enrolls low-risk users.

(71) "Rural area" means an area not in an urban area.

(72) "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(73) "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(74) "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B and 907 KAR 1:560.

(75) "State-funded adoption assistance" is defined by KRS 199.555(2).

(76) "State plan" is defined by 42 C.F.R. 400.203.

(77) "Subcontract" means an agreement entered into, directly or indirectly, by an MCO to arrange for the provision of covered services, or any administrative, support or other health service, but does not include an agreement with a provider.

(78) "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101.

(79) "Teaching hospital" means a hospital which has a teaching program approved as specified in 42 U.S.C. 1395x (b)(6).

(80) "Temporary Assistance for Needy Families" or "TANF" means a block grant program which:

(a) Succeeded AFDC; and

(b) Is designed to:

1. Assist needy families so that children can be cared for in their own homes;

2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;

3. Prevent out-of-wedlock pregnancies; and

4. Encourage the formation and maintenance of two (2) parent families.

(81) "Third party liability resource" means a resource available to an enrollee for the payment of expenses:

(a) Associated with the provision of covered services; and

(b) That does not include amounts exempt under Title XIX of the Social Security Act.

(82) "Transport time" means travel time:

(a) Under normal driving conditions; and

(b) With no extenuating circumstances.

(84) "Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

(85) "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

(86) "Ward" is defined in KRS 387.510(15).

(87) "Women, Infants and Children program" means a federal-ly-funded health and nutrition program for women, infants, and children.

Section 2. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Enrollment into a managed care organization shall be mandatory for a Medicaid or a KCHIP recipient except as established in subsection (3) of this section.

(2) The provisions in this administrative regulation shall be applicable to a:

(a) Medicaid recipient; or

(b) KCHIP recipient.

(3) The following shall not be required to enroll into a managed care organization:

(a) A recipient who resides in:

1. A nursing facility for more than thirty (30) days; or

2. An intermediate care facility for individuals with mental retardation or a developmental disability;

(b) A recipient who is:

1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;

2. Enrolled in another managed care program in accordance with 907 KAR 1:705;

3. Receiving:

a. Services through the breast and cervical cancer program pursuant to 907 KAR 1:805;

b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 1:640;

c. Services through a 1915(c) home and community based services waiver program;

d. Hospice services in a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability; or

e. Medicaid benefits as a Medicaid Works individual;

4. A Qualified Medicare beneficiary;

5. A specified low income Medicare beneficiary;

6. A Medicare qualified individual group 1 (QI-1) individual;

7. A qualified disabled and working individual;

8. A qualified alien eligible for Medicaid benefits for a limited period of time; or

9. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

(4)(a) Except for a child in foster care, a recipient who is eligible for enrollment into managed care shall be enrolled with an MCO that provides services to an enrollee whose primary residence is within the MCO's service area.

(b) A child in foster care shall be enrolled with an MCO in the county where the child's DCBS case is located.

(5) During the department's initial implementation of managed care in accordance with this administrative regulation, the department shall assign a recipient to an MCO based upon an algorithm that considers:

1. Continuity of care;

2. Enrollee preference of MCO or of an MCO provider; and

3. Cost.

(b) An assignment shall focus on a need of a child or an individual with a special health care need.

(6) A recipient shall have fourteen (14) calendar days from the date of the written notification of the MCO assignment referenced in subsection (5) of this section to choose a different MCO.

(7)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two months, shall have an opportunity to choose an MCO during the eligibility application process.

(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO.

(8) Each member of a household shall be assigned to the same MCO.

(9) The effective date of enrollment for a recipient described in subsection (7) of this section shall be:

(a) The date of Medicaid eligibility; and

(b) No earlier than November 1, 2011.

(10) A recipient shall be given a choice of MCOs, but not less than two (2).

(11) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility unless the recipient moves to a county in region three (3) as established in Section 28 of this administrative regulation.

(12) A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) days.

(13) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:

(a) Within ninety (90) days of the effective date of enrollment; and

(b) 1. Annually during an open enrollment period that shall be at the time of an enrollee's recertification for Medicaid eligibility; or

2. Annually during the month of birth for an enrollee who receives SSI benefits;

(c) Upon automatic enrollment under subsection (11) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in paragraph (b) of this subsection; and

(d) When the Commonwealth of Kentucky imposes an intermediate sanction specified in 42 C.F.R. 438.702(a)(3).

(14) Only the department shall have the authority to enroll a Medicaid recipient with a MCO in accordance with this section.

(15) Upon enrollment with an MCO, an enrollee shall receive

two (2) identification cards:

(a) A card shall be issued from the department that shall verify Medicaid eligibility; and

(b) A card shall be issued by the MCO that shall verify enrollment with the MCO.

(16)(a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least the following information:

1. The effective date of enrollment;
2. Name, location and contact information of PCP;
3. How to obtain a referral;
4. Care coordination;
5. The benefits of preventive health care;
6. Enrollee identification card;
7. A member handbook; and
8. A list of covered services.

(17) Enrollment with an MCO shall be without restriction.

(18) An MCO shall:

- (a) Have continuous open enrollment for new enrollees; and
- (b) Accept enrollees regardless of overall enrollment.

(19)(a) A recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid with the exception of:

1. A newborn who shall be enrolled beginning with their date of birth;

2. An unemployed parent who shall be enrolled beginning with the date unemployed parent meets the definition of unemployment in accordance with 45 C.F.R. 233.100; or

3. An enrollee who shall be retro-actively determined eligible for Medicaid.

(b) Retro-active eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

(20) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:

(a) 1. On the first day of the month of the original application for eligibility; or

2. On the first day of the month of retroactive eligibility as referenced in subsection (19) of this section, if applicable; and

(b) No earlier than November 1, 2011.

(21) A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 3. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department shall have the authority to disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall:

(a) Become effective on the first day of the month following disenrollment; and

(b) Occur:

1. If the enrollee:

a. No longer resides in an area served by the MCO;

b. Becomes incarcerated or deceased; or

c. Is exempt from managed care enrollment in accordance with Section 2(3) of this administrative regulation; or

2. In accordance with 42 C.F.R. 438.56.

(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid program;

(b) Is abusive or threatening;

(c) Becomes deceased; or

(d) No longer resides in an area served by the MCO.

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in an enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R.

438.56(e)(1).

(b) If the department fails to make a determination within the timeframe specified in subsection (6)(a), the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the MCO shall

(a) Assist in the selection of a new primary care provider, if requested;

(b) Cooperate with the new primary care provider in transitioning the enrollee's care; and

(c) Make the enrollee's medical record available to the new primary care provider, in accordance with state and federal law.

(8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 4. Enrollee Rights and Responsibilities. (1) An MCO shall have written policies and procedures:

(a) To protect the rights of an enrollee that includes the:

1. Protection against liability for payment in accordance with 42 U.S.C. 1396u-2(b)(6);

2. Rights specified in 42 C.F.R. 438.100;

3. Right to prepare an advance medical directive pursuant to KRS 311.621 through KRS 311.643;

4. Right to choose and change a primary care provider;

5. Right to file a grievance or appeal;

6. Right to receive assistance in filing a grievance or appeal;

7. Right to a state fair hearing;

8. Right to a timely referral and access to medically indicated specialty care; and

9. Right to access the enrollee's medical records in accordance with federal and state law.

(b) Regarding the responsibilities of enrollees that include the responsibility to:

1. Become informed about:

a. Enrollee rights specified in subsection (1) of this section; and

b. Service and treatment options;

2. Abide by the MCO's and department's policies and procedures;

3. Actively participate in personal health and care decisions;

4. Report suspected fraud or abuse; and

5. Keep appointments or call to cancel if unavailable to keep an appointment.

(2) The information specified in subsection (1) of this section, shall meet the information requirements established in 42 C.F.R. 438.10.

Section 5. Enrollee Grievance System. (1) An MCO shall have an internal grievance system in place that allows an enrollee or a provider on behalf of an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 424 and 42 U.S.C. 1396u-2(b)(4).

(2) An enrollee shall have a right to a state fair hearing in accordance with KRS Chapter 13 B without exhausting an MCO's internal appeal process.

(3) An MCO shall have written policies and procedures describing how an enrollee shall submit a request for a:

(a) Grievance or an appeal with the MCO; or

(b) State fair hearing in accordance with KRS Chapter 13B.

(4) A legal guardian of an enrollee who is a minor or an incapacitated adult, a representative of an enrollee as designated in writing to an MCO, or a provider acting on behalf of an enrollee and with the enrollee's written consent, has the right to file a grievance on behalf of the enrollee.

(5) An enrollee shall have thirty (30) calendar days from the date of an event causing dissatisfaction to file a grievance orally or in writing with the MCO.

(6) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(7) An investigation and final resolution of a grievance shall:

(a) Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and

(b) Include a resolution letter to the enrollee that shall include:

1. All information considered in investigating the grievance;

2. Findings and conclusions based on the investigation; and
3. The disposition of the grievance.

(8) An enrollee shall have thirty (30) calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.

(9) A legal guardian of an enrollee who is a minor or an incapacitated adult, a representative of the enrollee as designated in writing to an MCO, or a provider acting on behalf of an enrollee with the enrollee's written consent, shall have the right to file an appeal of an adverse action on behalf of the enrollee.

(10) An MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.

(11) An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action is treated as an appeal to establish the earliest possible filing date for the appeal.

(12) An oral appeal shall be followed by a written appeal that is signed by the enrollee within ten (10) calendar days.

(13) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution, unless an expedited resolution has been requested.

(14) An MCO shall extend the thirty (30) day timeframe for resolution of an appeal in subsection (11) of this section by fourteen (14) calendar days if:

- (a) An enrollee requests the extension; or

(b) 1. An MCO demonstrates to the department that there is need for additional information; and

2. The extension is in the enrollee's interest.

(15) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.

(16) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.

- (17) An MCO shall:

(a) Continue to provide benefits to an enrollee until one of the following occurs:

1. The enrollee withdraws the appeal;

2. Fourteen (14) days have passed since the date of the resolution letter, provided the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or

3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals when the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal in paragraph (b) of this subsection by up to fourteen (14) calendar days if the enrollee requests the extension or the MCO demonstrates to the department that there is need for additional information and the extension is in the enrollee's interest.

(18) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.

(19) If an MCO denies a request for an expedited resolution of an appeal, it shall:

- (a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period begins on the date the MCO received the original request for appeal;

- (b) Give prompt oral notice of the denial; and

(c) Follow up with a written notice within two (2) calendar days of the denial.

(20) An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.

(21) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563, 42 C.F.R. 438 Subpart F and 42 C.F.R. 431 Subpart E.

- (22) An enrollee shall be able to request a state fair hearing if

dissatisfied with an adverse action that has been taken by an MCO:

(a) Within thirty (30) days of receiving notice of an adverse action; or

(b) Within thirty (30) days of the final decision of an MCO to an appeal filed by an enrollee.

(23) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(24) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

(a) Comply with the state fair hearing requirements established by the state and federal Medicaid law; or

(b) Appear in person and present evidence at the state fair hearing.

(25) An MCO shall:

(a) Provide information specified in 42 C.F.R. 438.10(g)(1) about the grievance system to a service provider and a subcontractor at the time they enter into a contract;

(b) Maintain a grievance or an appeal file in a secure and designated area;

(c) Make a grievance or an appeal file accessible to the department or its designee upon request;

(d) Retain a grievance or an appeal file for ten (10) years following a final decision by the MCO, the department, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later;

(e) Have procedures for assuring that a grievance or an appeal file contains:

1. Information to identify the grievance or appeal;
2. The date a grievance or appeal was received;
3. The nature of the grievance or appeal;
4. A notice to the enrollee of receipt of the grievance or appeal;
5. Correspondence between the MCO and the enrollee;
6. The date the grievance or appeal is resolved;
7. The decision made by the MCO of the grievance or appeal;
8. The notice of a final decision to the enrollee; and
9. Information pertaining to the grievance or appeal; and

(f) Make available to an enrollee documentation regarding a grievance or an appeal.

(26) An MCO shall designate an individual to:

(a) Execute the policies and procedures for resolution of a grievance or appeal;

(b) Review patterns or trends in grievances or appeals; and

(c) Initiate a corrective action, if needed.

Section 6. Member Services. (1) An MCO shall have a member services function that includes a member call center and a behavioral health call center that shall:

(a) Be staffed Monday through Friday from 7:00 a.m. to 7:00 p.m. Eastern Standard Time; and

(b) Meet the current American Accreditation Health Care Commission or Utilization Review Accreditation Committee (URAC)-designed Health Call Center Standard (HCC) for call center abandonment rate, blockage rate and average speed of answer.

(2)(a) An MCO shall provide access to medical advice to an enrollee through a toll-free call-in system, available twenty-four (24) hours a day, seven (7) days a week.

(b) The call-in system shall be staffed by medical professionals to include:

1. Physicians;
2. Physician assistants;
3. Licensed practical nurses; or
4. Registered nurses.

(3) An MCO shall:

(a) 1. Provide foreign language interpreter services for an enrollee.

2. Interpreter services shall be available free of charge.

(b) Respond to the special communication needs of the disabled, blind, deaf, or aged.

(c) Facilitate direct access to a specialty physician for an enrollee:

1. With a chronic or complex health condition;
2. Who is aged, blind, deaf, or disabled; or
3. Identified as having a special healthcare need and requires a course of treatment or regular healthcare monitoring;

(d) Arrange for and assist with scheduling an EPSDT service in conformance with federal law governing EPSDT;

(e) Provide an enrollee with information or refer to a support service;

(f) Facilitate direct access to a covered service in accordance with Section 29(4)

(g) Facilitate access to a:

1. Behavioral health service;
2. Pharmaceutical service; or

3. Service provided by a public health department, community mental health center, rural health clinic, federally qualified health center, the Commission for Children with Special Health Care Needs or a charitable care provider;

(h) Assist an enrollee in:

1. Scheduling an appointment with a provider;
2. Obtaining transportation for an emergency or non-emergency service;
3. Completing a health risk assessment; or
4. Accessing an MCO health education program;

(i) Process, record, and track an enrollee grievance and appeal; or

(j) Refer an enrollee to case management or disease management.

Section 7. Enrollee Selection of Primary Care Provider. (1) Except for an enrollee described in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have a primary care provider:

(a) A dual eligible;

(b) A child in foster care;

(c) A child under the age of eighteen (18) years who is disabled; or

(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 1:810.

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

- a. Has historically provided services to the enrollee; and
- b. Meets the requirements of subsection (5) of this section.

(b) If no primary care provider meets the requirements of paragraph (a)2, an MCO shall assign the enrollee to a primary care provider who is within:

1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence or place of employment if the enrollee is in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence or place of employment if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) days of a second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee and has chosen a primary care provider after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) days of the enrollee's initial enrollment.

(5)(a) An enrollee shall be allowed to select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within their scope of licensure or certification, including:

1. A physician;
2. An advanced practice registered nurse;
3. A physician assistant; or
4. A clinic, including a primary care center, federally qualified health center, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care directly or through linkage with a primary care provider.

(7) Upon enrollment in an MCO, an enrollee shall have the right to change primary care providers:

(a) Within the first ninety (90) days of assignment;

(b) Once a year regardless of reason;

(c) At any time for a reason approved by the MCO;

(d) If during a temporary loss of eligibility, an enrollee loses the opportunity in paragraph (b) of this subsection;

(e) If Medicare or Medicaid imposes a sanction on the PCP;

(f) If the PCP is no longer in the MCO provider network; or

(g) At any time with cause which shall include and enrollee:

1. Receiving poor quality of care; or

3. Lacking access to providers qualified to treat the enrollee's medical condition.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following:

(a) A change in the enrollee's health status or treatment needs;

(b) An enrollee's utilization of health services;

(c) An enrollee's diminished mental capacity; or

(d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO shall have the authority to approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

(a) A family planning service in accordance with 42 C.F.R. 431.51;

(b) An emergency service in accordance with 42 C.F.R. 438.114;

(c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c);

(d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4).

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 8. Primary Care Provider Responsibilities. (1) A PCP shall:

(a) Maintain:

1. Continuity of an enrollee's health care;

2. A current medical record for an enrollee in accordance with Section 24 of this administrative regulation; and

3. Formalized relationships with other PCPs to refer enrollees for after hours care, during certain days, for certain services, or other reasons to extend their practice.

(b) Refer an enrollee for specialty care and other medically

necessary services, both in and out of network, if the services are not available within the MCO's network;

(c) Discuss advance medical directives with an enrollee;

(d) Provide primary and preventive care, including EPSDT services;

(e) Refer an enrollee for a behavioral health service if clinically indicated; and

(f) Have an after-hours phone arrangement that ensures that a PCP or a designated medical practitioner returns the call within thirty (30) minutes;

(2) An MCO shall monitor a PCP to ensure compliance with the policies in this section.

Section 9. Member Handbook. (1) An MCO shall:

(a) Send a member handbook to an enrollee, by a method that shall not take more than three (3) days to reach the enrollee, within five (5) business days of enrollment;

(b) Review a member handbook at least annually;

(c) Communicate a change to a member handbook to an enrollee in writing; and

(d) Add a revision date to a member handbook after revising.

(2) A member handbook shall:

(a) Be available:

1. In English, Spanish, and any other language spoken by at least five (5) percent of the potential enrollee or enrollee population;

2. In hardcopy; and

3. On the MCO's Web site;

(b) Be written at no higher than a sixth grade reading comprehension level; and

(c) Include at a minimum the following information:

1. The MCO's network of primary care providers, including the names, telephone numbers, and service site addresses of available primary care providers;

2. The procedures for:

a. Selecting a PCP and scheduling an initial health appointment;

b. Obtaining:

(i) Emergency or non emergency care after hours;

(ii) Transportation for emergency or non-emergency care;

(iii) An EPSDT service;

(iv) A covered service from an out-of-network provider; or

(v) A long term care service;

c. Notifying DCBS of a change in family size or address, a birth, or a death of an enrollee;

d.(i) Selecting or requesting to change a PCP;

(ii) A reason a request for a change may be denied by the MCO;

(iii) A reason a provider may request to transfer an enrollee to a different PCP;

e. Filing a grievance or appeal, including the title, address and telephone number of the person responsible for processing and resolving a grievance or appeal;

3. The name of the MCO, address, and telephone number from which it conducts its business;

4. The MCO's:

a. Business hours; and

b. Member service and toll-free medical call-in telephone numbers;

5. Covered services, an explanation of any service limitation or exclusion from coverage, and a notice stating that the MCO will be liable only for those services authorized by the MCO, except for the services excluded in Section 7(11) of this administrative regulation.

6. Member rights and responsibilities;

7. For a life-threatening situation, instructions to use the emergency medical services available or to activate emergency medical services by dialing 911;

8. Information on:

a. The availability of maternity and family planning services, and for the prevention and treatment of sexually transmitted diseases;

b. Accessing the services referenced in clause a. of this paragraph;

c. Accessing care before a primary care provider is assigned or

chosen;

d. The Cabinet for Health and Family Services' independent ombudsman program; and

e. The availability of, and procedures for, obtaining:

(i) A behavioral health or substance abuse service;

(ii) A health education service; and

(iii) Care coordination, case management, and disease management services;

9. Direct access services that may be accessed without a referral; and

10. An enrollee's right to obtain a second opinion and information on obtaining a second opinion; and

(c) Meet the information requirements established in Section 12 of this administrative regulation.

(3) Changes to a member handbook shall be approved by the department prior to the publication of the handbook.

Section 10. Member Education and Outreach. (1) An MCO shall:

(a) Have an enrollee and community education and outreach program throughout the MCO's service area;

(b) Submit an annual outreach plan to the department for approval;

(c) Assess the homeless population within its service area by implementing and maintaining an outreach plan for homeless individuals, including victims of domestic violence; and

(d) Not differentiate between a service provided to an enrollee who is homeless and an enrollee who is not homeless.

(2) An MCO's outreach plan shall include:

(a) Utilizing existing community resources including shelters and clinics; and

(b) Face-to-face encounters.

Section 11. Enrollee Non-Liability for Payment. (1) Except as specified in Section 58 or Section 7(11) of this administrative regulation, an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(2) An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

(3) If an enrollee agrees in advance in writing to pay for a non-Medicaid covered service, the enrollee's MCO shall be authorized to bill the enrollee for the service.

Section 12. Provision of Information Requirements. (1) An MCO shall:

(a) Comply with the requirements established in 42 U.S.C. 1396u-2(a)(5) and 42 C.F.R. 438.10; and

(b) Provide translation services to an enrollee on site or via telephone.

(2) Written material provided by an MCO to an enrollee or potential enrollee shall:

(a) Be written at a sixth grade reading comprehension level;

(b) Be published in at least a twelve (12) point font;

(c) Comply with the requirements established in 42 U.S.C. Chapter 126 and 47 U.S.C. Chapter 5 (the Americans with Disabilities Act);

(d) Be updated as necessary to maintain accuracy; and

(e) Be available in Braille or in an audio format for an individual who is partially blind or blind.

(3) All written material intended for an enrollee, unless unique to an individual enrollee or exempted by the department, shall be submitted to the department for review and approval prior to publication or distribution to the enrollee.

Section 13. Provider Services. (1) An MCO shall have a provider services function responsible for:

(a) Enrolling, credentialing, recredentialing, and evaluating a provider;

(b) Assisting a provider with an inquiry regarding enrollee status, prior authorization, referral, claim submission, or payment;

(c) Informing a provider of their rights and responsibilities;

(d) Handling, recording, and tracking a provider grievance and appeal;

- (e) Developing, distributing, and maintaining a provider manual;
 - (f) Provider orientation and training, including:
 1. Medicaid covered services;
 2. EPSDT coverage;
 3. Medicaid policies and procedures;
 4. MCO policies and procedures; and
 5. Fraud, waste, and abuse;
 - (g) Assisting in coordinating care for a child or adult with a complex or chronic condition;
 - (h) Assisting a provider with enrolling in the Vaccines for Children Program in accordance with 907 KAR 1:680; and
 - (i) Providing technical support to a provider regarding the provision of a service.
- (2) An MCO's provider services staff shall:
- (a) Be available Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Standard Time; and
 - (b) Operate a provider call center.

Section 14. Provider Network. (1) An MCO shall:

- (a) Enroll providers of sufficient types, numbers, and specialties in its network to satisfy the:
 1. Access and capacity requirements established in Section 15 of this administrative regulation; and
 2. Quality requirements established in Section 48 of this administrative regulation;
 - (b) Attempt to enroll the following providers in its network:
 1. A teaching hospital;
 2. A rural health clinic;
 3. The Kentucky Commission for Children with Special Health Care Needs;
 4. A local health department; and
 5. A community mental health center;
 - (c) Demonstrate to the department the extent to which it has enrolled providers in its network who have traditionally provided services to Medicaid recipients;
 - (d) Have at least one (1) FQHC in a region where the MCO operates in accordance with Section 28, if there is an FQHC that is appropriately licensed to provide services in the region; and
 - (e) Exclude, terminate, or suspend from its network a provider or subcontractor who engages in an activity that results in suspension, termination, or exclusion from the Medicare or a Medicaid program.
- (2) The length of an exclusion, termination, or suspension referenced in subsection (1)(e) of this subsection shall equal the length of the exclusion, termination, or suspension imposed by the Medicare or a Medicaid program.
- (3) If an MCO is unable to enroll a provider specified in subsection (1)(b) or (1)(c) of this section, the MCO shall submit to the department for approval, documentation which supports the MCO's conclusion that adequate services and service sites as required in Section 15 of this administrative regulation shall be provided without enrolling the specified provider.
- (4) If an MCO determines that its provider network is inadequate to comply with the access standards established in Section 15 of this administrative regulation, the MCO shall:
- (a) Notify the department; and
 - (b) Submit a corrective action plan to the department.
- (5) A corrective action plan referenced in subsection (4)(b) of this section shall:
- (a) Describe the deficiency in detail; and
 - (b) Identify a specific action to be taken by the MCO to correct the deficiency, including a time frame.

Section 15. Provider Access Requirements. (1) The access standards requirements established in 42 C.F.R. 438.206 through 210 shall apply to an MCO.

- (2) An MCO shall make available and accessible to an enrollee:
- (a) Facilities, service locations, and personnel sufficient to provide covered services consistent with the requirements specified in this section;
 - (b) Emergency medical services twenty-four (24) hours a day, seven (7) days a week; and

(c) Urgent care services within 48 hours of request.

(3)(a) An MCO's primary care provider delivery site shall be no more than:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence or place of employment in an urban area; or
2. Forty-five (45) miles or forty-five (45) minutes from an enrollee's residence or place of employment in a non-urban area.

(b) An MCO's primary care provider shall not have an enrollee to primary care provider ratio greater than 1,500:1.

(c) An appointment wait time at an MCO's primary care delivery site shall not exceed:

1. Thirty (30) days from the date of an enrollee's request for a routine or preventive service; or
2. Forty-eight (48) hours from an enrollee's request for urgent care.

(4)(a) An appointment wait time for a specialist, except for a specialist providing a behavioral health service, shall not exceed thirty (30) days from the referral for routine care or forty-eight (48) hours from the referral for urgent care.

(b)1. A behavioral health service requiring crisis stabilization shall be provided within twenty-four (24) hours of the referral.

2. Behavioral health urgent care shall be provided within forty-eight (48) hours of the referral.

3. A behavioral health service appointment following a discharge from an acute psychiatric hospital shall occur within fourteen (14) days of discharge.

4. A behavioral health service appointment not included in subparagraph 1, 2, or 3 of this paragraph shall occur within sixty (60) days of the referral.

(5) An MCO shall have:

1. Specialists available for the subpopulations designated in Section 30 of this administrative regulation; and

2. Sufficient pediatric specialists to meet the needs of enrollees who are less than twenty-one (21) years of age.

(6) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition, whether or not the facility is in the MCO network.

(7)(a) Except as provided in paragraph (b) of this subsection, an enrollee's transport time to a hospital shall not exceed thirty (30) minutes from an enrollee's residence.

(b) Transport time to a hospital shall not exceed sixty (60) minutes from an enrollee's residence:

1. In a rural area; or
2. For a behavioral or physical rehabilitation service.

(8)(a) Transport time for a dental service shall not exceed one (1) hour from an enrollee's residence.

(b) A dental appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or
2. Forty-eight (48) hours for urgent care.

(9)(a) Transport time to a general vision, laboratory, or radiological service shall not exceed one (1) hour from an enrollee's residence.

(b) A general vision, laboratory, or radiological appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or
2. Forty-eight (48) hours for urgent care.

(10)(a) Transport time to a pharmacy service shall not exceed one (1) hour from an enrollee's residence.

(b) A pharmacy delivery site shall not be further than fifty (50) miles from an enrollee's residence.

Section 16. Provider Manual. (1) An MCO shall provide a provider manual to a provider within five (5) working days of enrollment with the MCO.

(2) Prior to distributing a provider manual or update to a provider manual, an MCO shall procure the department's approval of the provider manual or provider manual update.

(3) A provider manual shall be available in hard copy and on the MCO's Web site.

Section 17. Provider Orientation and Education. An MCO shall:

(1) Conduct an initial orientation for a provider within thirty (30) days of enrollment with the MCO to include:

- (a) Medicaid coverage policies and procedures;

- (b) Reporting fraud and abuse;
- (c) Medicaid eligibility groups;
- (d) The standards for preventive health services;
- (e) The special needs of enrollees;
- (f) Advance medical directives;
- (g) EPSDT services;
- (h) Claims submission;
- (i) Care management or disease management programs available to enrollees;
- (j) Cultural sensitivity;
- (k) The needs of enrollees with mental, developmental, or physical disabilities;
- (l) The reporting of communicable diseases;
- (m) The MCO's QAPI program as referenced in Section 48;
- (n) Medical records;
- (o) The external quality review organization; and
- (p) The rights and responsibilities of enrollees and providers; and
- (2) Ensure that a provider:
 - (a) Is informed of an update on a federal, state, or contractual requirement;
 - (b) Receives education on a finding from its QAPI program when deemed necessary by the MCO or department; and
 - (c) Makes available to the department training attendance rosters that shall be dated and signed by the attendees.

Section 18. Provider Credentialing and Recredentialing. (1) An MCO shall:

- (a) Have policies and procedures that comply with 907 KAR 1:672, KRS 205.560, and 42 C.F.R. 455 subpart E regarding the credentialing and recredentialing of a provider;
- (b) Have a process for verifying a provider's credentials and malpractice insurance that shall include:
 - 1. Written policies and procedures for credentialing and recredentialing of a provider;
 - 2. A governing body, or a group or individual to whom the governing body has formally delegated the credentialing function; and
 - 3. A review of the credentialing policies and procedures by a governing body;
- (c) Have a credentialing committee that makes recommendations regarding credentialing;
- (d) If a provider requires a review by the credentialing committee, notify the department of the facts and outcomes of the review;
- (e) Have written policies and procedures for:
 - 1. Terminating and suspending a provider; and
 - 2. Reporting a quality deficiency that results in a suspension or termination of a provider;
- (f) Document its monitoring of a provider;
- (g) Verify a provider's qualifications through a primary source that includes:
 - 1. A current valid license or certificate to practice in the commonwealth of Kentucky;
 - 2. A Drug Enforcement Administration certificate and number, if applicable;
 - 3. If a provider is not board certified, graduation from a medical school and completion of a residency program;
 - 4. Completion of an accredited nursing, dental, physician assistant, or vision program, if applicable;
 - 5. If a provider states on an application that the provider is board certified in a specialty, a professional board certification;
 - 6. A previous five (5) year work history;
 - 7. A professional liability claims history;
 - 8. If a provider requires access to a hospital to practice, proof that the provider has clinical privileges and is in good standing at a hospital designated by the provider as the primary admitting hospital;
 - 9. Malpractice insurance;
 - 10. Documentation of a:
 - a. Revocation, suspension, or probation of a state license or Drug Enforcement Agency certificate and number;
 - b. Curtailment or suspension of a medical staff privilege;
 - c. Sanction or penalty imposed by the United States Department of Health and Human Services or a state Medicaid agency; and

- d. Censure by a state or county professional association; or
- 11. The most recent provider information available from the National Practitioner Data Bank;
- (h) Obtain access to the National Practitioner Data Bank as part of its credentialing process;
- (i) Have:
 - 1. A process to recredential a provider at least once every three (3) years that shall be in accordance with subsection (3) of this section; and
 - 2. Procedures for monitoring a provider sanction, a complaint, or a quality issue between a recredentialing cycle; and
- (j) Have NCQA certification for credentialing by April 1, 2012.
- (2) If an MCO subcontracts a credentialing and re-credentialing function, the MCO and the subcontractor shall have written policies and procedures for credentialing and recredentialing.
- (3) A provider shall complete a credentialing application that includes a statement by the provider regarding:
 - (a) The provider's ability to perform an essential function of a position, with or without accommodation;
 - (b) The provider's lack of current illegal drug use;
 - (c) The provider's history of a:
 - 1. Loss of license or a felony conviction;
 - 2. Loss or limitation of a privilege; or
 - 3. Disciplinary action;
 - (d) A sanction, suspension, or termination by the United States Department of Health and Human Services or a state Medicaid agency;
 - (e) Clinical privileges and standing at a hospital designated as the primary admitting hospital of the provider;
 - (f) Malpractice insurance maintained by the provider; and
 - (g) The correctness and completeness of the application.
- (4) The department shall be responsible for credentialing and recredentialing a:
 - (a) Hospital-based provider; and
 - (b) Provider enrolled with an MCO for a six (6) month period that begins on November 1, 2011 and ends on April 30, 2012.

Section 19. MCO Provider Enrollment. (1) A provider enrolled with an MCO shall:

- (a) Be credentialed by the MCO in accordance with the standards established in Section 18 of this administrative regulation; and
- (b) Be eligible to enroll with the Kentucky Medicaid Program in accordance with 907 KAR 1:672.
- (2) An MCO shall:
 - (a) Not enroll a provider in its network if:
 - 1. The provider has an active sanction imposed by the Centers for Medicare and Medicaid Services or a state Medicaid agency;
 - 2. A required provider license and a certification are not current;
 - 3. A provider owes money to the Kentucky Medicaid program;
 - 4. The Kentucky Office of the Attorney General has an active fraud investigation of the provider; or
 - 5. The provider is not credentialed;
 - (b) Have and maintain documentation regarding a provider's qualifications; and
 - (c) Make the documentation referenced in paragraph (b) of this subsection available for review by the department.
- (3)(a) A provider shall not be required to participate in Kentucky Medicaid fee-for-service to enroll with an MCO.
- (b) If a provider is not a participant in Kentucky Medicaid fee-for-service, the provider shall obtain a Medicaid provider number from the department.

Section 20. Provider Discrimination. An MCO shall:

- (1) Comply with the antidiscrimination requirements established in:
 - (a) 42 U.S.C. 1396u-2(b)(7);
 - (b) 42 C.F.R. 438.12; and
 - (c) KRS 304.17A-270; and
- (2) Provide written notice to a provider denied participation in the MCO's network stating the reason for the denial.

Section 21. Release for Ethical Reasons. An MCO shall:

- (1) Not:

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(a) Require a provider to perform a treatment or procedure that is contrary to the provider's conscience, religious beliefs, or ethical principles in accordance with 42 C.F.R. 438.102; or

(b) Prohibit or restrict a provider from advising an enrollee about health status, medical care or a treatment:

1. Whether or not coverage is provided by the MCO; and

2. If the provider is acting within the lawful scope of practice; and

(2) Have a referral process in place for a situation where a provider declines to perform a service because of an ethical reason.

Section 22. Provider Grievances and Appeals. (1) An MCO shall have written policies and procedures for the filing of a provider grievance or appeal.

(2) A provider shall have the right to file a grievance or an appeal with an MCO.

(3)(a) A provider grievance or appeal shall be resolved within thirty (30) calendar days.

(b) If a grievance or appeal is not resolved within thirty (30) days, an MCO shall request a fourteen (14) day extension from the provider.

(c) If a provider requests an extension, the MCO shall approve the extension.

Section 23. Cost Reporting Information. The department shall provide to the MCO the calculation of Medicaid allowable costs as used in the Medicaid program.

Section 24. Medical Records. (1) An MCO shall:

(a) Require a provider to maintain an enrollee medical record on paper or in an electronic format; and

(b) Have a process to systematically review provider medical records to ensure compliance with the medical records standards established in this section.

(2) An enrollee medical record shall:

(a) Be legible, current, detailed, organized, and signed by the service provider;

(b)1. Be kept for at least five (5) years from the date of service unless federal law or regulation requires a longer retention period; and

2. If federal law or regulation requires a retention period longer than five (5) years, an enrollee medical record shall be kept for at least as long as the federally-required retention period;

(c) Include the following minimal detail for an individual clinical encounter:

1. The history and physical examination for the presenting complaint;

2. A psychological or social factor affecting the patient's physical or behavioral health;

3. An unresolved problem, referral, or result from a diagnostic test; and

4. The plan of treatment including:

a. Medication history, medications prescribed, including the strength, amount, and directions for use and refills;

b. Therapy or other prescribed regimen; and

c. Follow-up plans, including consultation, referrals, and return appointment.

(3) A medical chart organization and documentation shall, at a minimum, contain the following:

(a) Enrollee identification information on each page;

(b) Enrollee date of birth, age, gender, marital status, race, or ethnicity, mailing address, home and work addresses, and telephone numbers (if applicable), employer (if applicable), school (if applicable), name and telephone number of an emergency contact, consent form, language spoken and guardianship information (if applicable);

(c) Date of data entry and of encounter;

(d) Provider's name;

(e) Any known allergies or adverse reactions of the enrollee;

(f) Enrollee's past medical history;

(g) Identification of any current problem;

(h) A consultation, laboratory, or radiology report filed in the medical record shall contain the ordering provider's initials or other

documentation indicating review;

(i) Documentation of immunizations;

(j) Identification and history of nicotine, alcohol use, or substance abuse;

(k) Documentation of notification of reportable diseases and conditions to the local health department serving the jurisdiction in which the enrollee resides or to the Department for Public Health pursuant to 902 KAR 2:020;

(l) Follow-up visits provided secondary to reports of emergency room care;

(m) Hospital discharge summaries;

(n) Advance medical directives for adults; and

(o) All written denials of service and the reason for the denial.

Section 25. Confidentiality of Medical Information. (1) An MCO shall:

(a) Maintain confidentiality of all enrollee eligibility information and medical records;

(b) Prevent unauthorized disclosure of the information referenced in subsection (1) of this section in accordance with KRS 194A.060, KRS 214.185, KRS 434.840 to 434.860, and 42 C.F.R. 431, Subpart F;

(c) Have written policies and procedures for maintaining the confidentiality of enrollee records;

(d) Comply with 42 U.S.C. 1320d (Health Insurance Portability and Accountability Act) and 45 C.F.R. Parts 160 and 164;

(e) An MCO on behalf of its employees and agents shall sign a confidentiality agreement;

(f) Limit access to medical information to a person or agency which requires the information in order to perform a duty related to the department's administration of the Medicaid program, including the department, the United States Department of Health and Human Services, the United States Attorney General, the CHFS OIG, the Kentucky Attorney General, or other agency required by the department; and

(g) Submit a request for disclosure of information to the department within twenty-four (24) hours.

(2) No information referenced in subsection (1)(g) of this section shall be disclosed by an MCO pursuant to the request without prior written authorization from the department.

Section 26. Americans with Disabilities Act and Cabinet Ombudsman. (1) An MCO shall:

(a) Require by contract with its network providers and subcontractors that a service location meets:

1. The requirements established in 42 U.S.C. Chapter 126 and 47 U.S.C. Chapter 5 (the Americans with Disabilities Act); and

2. All local requirements which apply to health facilities pertaining to adequate space, supplies, sanitation, and fire and safety procedures;

(b) Fully cooperate with the Cabinet for Health and Family Services independent ombudsman; and

(c) Provide immediate access, to the Cabinet for Health and Family Services independent ombudsman, to an enrollee's records if the enrollee has given consent.

(2) An MCO's member handbook shall contain information regarding the Cabinet for Health and Family Services independent ombudsman program.

Section 27. Marketing. (1) An MCO shall:

(a) Comply with the requirements in 42 C.F.R. 438.104 regarding marketing activities;

(b) Have a system of control over the content, form, and method of dissemination of its marketing and information materials;

(c) Submit a marketing plan and marketing materials to the department for written approval prior to implementation or distribution.

(d) If conducting mass media marketing, direct the marketing activities to enrollees in the entire service area pursuant to the marketing plan; and

(e) Not:

1. Conduct face-to-face marketing;

2. Use fraudulent, misleading, or misrepresentative information in its marketing materials;

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3. Offer material or financial gain to a:
 - a. Potential enrollee as an inducement to select a particular provider or use a product; or
 - b. Person for the purpose of soliciting, referring, or otherwise facilitating the enrollment of an enrollee;

4. Conduct:

- a. Direct telephone marketing to enrollees and potential enrollees who do not reside in the MCO service area; or
- b. Direct or indirect door-to-door, telephone, or other cold-call marketing activity; or

5. Include in its marketing materials an assertion or statement that CMS, the federal government, the commonwealth, or other entity endorses the MCO.

(2) An MCO's marketing material shall meet the information requirements established in Section 12 of this administrative regulation.

Section 28. MCO Service Areas. (1)(a) An MCO's service areas shall include regions one (1), two (2), four (4), five (5), six (6), seven (7), and eight (8).

(b) An MCO's service areas shall not include region three (3).

(2) A recipient who is eligible for enrollment with a managed care organization and who resides in region three (3) shall receive services in accordance with 907 KAR 1:705.

(3) Region one (1) shall include the following counties:

- (a) Ballard;
- (b) Caldwell;
- (c) Calloway;
- (d) Carlisle;
- (e) Crittenden;
- (f) Fulton;
- (g) Graves;
- (h) Hickman;
- (i) Livingston;
- (j). Lyon;
- (k) Marshall; and

(l) McCracken;

(4) Region two (2) shall include the following counties:

- (a) Christian;
- (b) Daviess;
- (c) Hancock;
- (d) Henderson;
- (e) Hopkins;
- (f) McLean;
- (g) Muhlenberg;
- (h) Ohio;
- (i) Trigg;
- (j). Todd;
- (k) Union; and

(l) Webster;

(5) Region three (3) shall include the following counties:

- (a) Breckenridge;
- (b) Bullitt;
- (c) Carroll;
- (d) Grayson;
- (e) Hardin;
- (f) Henry;
- (g) Jefferson;
- (h) Larue;
- (i) Marion;
- (j) Meade;
- (k) Nelson;
- (l) Oldham;
- (m) Shelby;
- (n) Spencer;
- (o) Trimble; and

(p) Washington;

(6) Region four (4) shall include the following counties:

- (a) Adair;
- (b) Allen;
- (c) Barren;
- (d) Butler;
- (e) Casey;
- (f) Clinton;

- (g) Cumberland;
- (h) Edmonson;
- (i) Green;
- (j) Hart;
- (k) Logan;
- (l) McCreary;
- (m) Metcalfe;
- (n) Monroe;
- (o) Pulaski;
- (p) Russell;
- (q) Simpson;
- (r) Taylor;
- (s) Warren; and
- (t) Wayne;

(7) Region five (5) shall include the following counties:

- (a) Anderson;
- (b) Bourbon;
- (c) Boyle;
- (d) Clark;
- (e) Estill;
- (f) Fayette;
- (g) Franklin;
- (h) Garrard;
- (i) Harrison;
- (j) Jackson;
- (k) Jessamine;
- (l) Lincoln;
- (m) Madison;
- (n) Mercer;
- (o) Montgomery;
- (p) Nicholas;
- (q) Owen;
- (r) Powell;
- (s) Rockcastle;
- (t) Scott; and
- (u) Woodford;

(8) Region six (6) shall include the following counties:

- (a) Boone;
- (b) Campbell;
- (c) Gallatin;
- (d) Grant;
- (e) Kenton; and
- (f) Pendleton;

(9) Region seven (7) shall include the following counties:

- (a) Bath;
- (b) Boyd;
- (c) Bracken;
- (d) Carter;
- (e) Elliott;
- (f) Fleming;
- (g) Greenup;
- (h) Lawrence;
- (i) Lewis;
- (j) Mason;
- (k) Menifee;
- (l) Morgan;
- (m) Rowan;
- (n) Robertson;

(10) Region eight (8) shall include the following counties:

- (a) Bell;
- (b) Breathitt;
- (c) Clay;
- (d) Floyd;
- (e) Harlan;
- (f) Johnson;
- (g) Knott;
- (h) Knox;
- (i) Laurel;
- (j) Lee;
- (k) Leslie;
- (l) Letcher;
- (m) Magoffin;
- (n) Martin;
- (o) Owsley;

- (p) Perry;
- (q) Pike;
- (r) Wolfe; and
- (s) Whitley.

Section 29. Covered Services. (1) Except as established in subsection (2) of this section, an MCO shall be responsible for the provision and costs of a covered health service:

(a) Established in Title 907 of the Kentucky Administrative Regulations;

(b) In the amount, duration, and scope that the services are covered for recipients pursuant to the department's administrative regulations located in Title 907 of the Kentucky Administrative Regulations; and

(c) Beginning on the date of enrollment of a recipient into the MCO.

(2) Other than a nursing facility cost referenced in subsection (3)(g) of this section, an MCO shall be responsible for the cost of a non-nursing facility covered service provided to an enrollee during the first thirty (30) days of a nursing facility admission in accordance with this administrative regulation.

(3) An MCO shall not be responsible for the provision or costs of the following:

(a) A service provided to a recipient in an intermediate care facility for individuals with mental retardation or a developmental disability;

(b) A service provided to a recipient in a 1915(c) home and community based waiver program;

(c) A hospice service provided to a recipient in an institution;

(d) A nonemergency transportation service provided in accordance with 907 KAR 3:066;

(e) Except as established in Section 35 of this administration regulation, a school-based health service;

(f) A service not covered by the Kentucky Medicaid program;

(g) A health access nurturing developing service pursuant to 907 KAR 3:140;

(h) An early intervention program service pursuant to 907 KAR 1:720; or

(i) A nursing facility service for an enrollee during the first thirty (30) days of a nursing facility admission.

(4) The following covered services provided by an MCO shall be accessible to an enrollee without a referral from the enrollee's primary care provider:

(a) A primary care vision service;

(b) A primary dental or oral surgery service;

(c) An evaluation by an orthodontist or a prosthodontist;

(d) A service provided by a women's health specialist;

(e) A family planning service;

(f) An emergency service;

(g) Maternity care for an enrollee under age eighteen (18);

(h) An immunization for an enrollee under twenty-one (21);

(i) A screening, evaluation, or treatment service for a sexually transmitted disease or tuberculosis;

(j) Testing for HIV, HIV-related condition, or other communicable disease; and

(k) A chiropractic service.

(5) An MCO shall:

(a) Not require the use of a network provider for a family planning service;

(b) In accordance with 42 C.F.R. 431.51(b), reimburse for a family planning service provided within or outside of the MCO's provider network;

(c) Cover an emergency service:

1. In accordance with 42 U.S.C. 1396u-2(b)(2)(A)(i);

2. Provided within or outside of the MCO's provider network; or

3. Out-of-state in accordance with 42 C.F.R. 431.52;

(d) Comply with 42 U.S.C. 1396u-2(b)(A)(ii); and

(e) Be responsible for the provision and costs of a covered service as described in this section beginning on or after the beginning date of enrollment of a recipient with an MCO as described in Section 2 of this administrative regulation.

(6)(a) If an enrollee is receiving a medically necessary covered service the day before enrollment with an MCO, the MCO shall be responsible for the costs of continuation of the medically necessary

covered service without prior approval and without regard to whether services are provided within or outside the MCO's network until the MCO can reasonably transfer the enrollee to a network provider.

(b) An MCO shall comply with paragraph (a) of this subsection without impeding service delivery or jeopardizing the enrollee's health.

Section 30. Enrollees with Special Health Care Needs. (1) In accordance with

42 C.F.R. 438.208:

(a) The following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or adoption assistance;

2. A homeless individual;

3. An individual with a chronic physical or behavioral illness;

4. A blind or disabled child under the age of nineteen (19) years;

5. An individual who is eligible for SSI benefits; or

6. An adult who is a ward of the commonwealth in accordance with 910 KAR Chapter 2; and

(b) An MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;

2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;

3. Include the use of appropriate health care professionals to perform an assessment; and

4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(2) A treatment plan referenced in subsection (1)(b)4 of this section shall be developed by an enrollee's primary care provider with participation from the enrollee or the enrollee's legal guardian as referenced in Section 43 of this administrative regulation.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials referenced in paragraph (a) of this subsection to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need;

(c) Distribute to an enrollee with a special health care need or a caregiver, parent, or legal guardian of an enrollee with a special health care need, information and materials specific to the need of the enrollee; and

(d) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information referenced in subsection (3)(c) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

(5)(a) An enrollee who is a child in foster care or receiving adoption assistance shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

(b) The service plan referenced in paragraph (a) of this subsection shall be used by DCBS and the MCO to determine the enrollee's medical needs and identify the need for case management.

(c) At least once a month, the MCO shall meet with DCBS to discuss the health care needs of the child as identified in the service plan.

(d) If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with MCO to develop a plan of care.

(e) The MCO shall consult with DCBS prior to developing or modifying a plan of care.

(6)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

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(b) If the service plan referenced in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a plan of care.

Section 31. Second Opinion. An enrollee shall have the right to a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 32. Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services. (1) An MCO shall provide an enrollee under the age of twenty-one (21) years EPSDT services in compliance with:

- (a) 907 KAR 11:034;
- (b) 42 U.S.C. 1396d; and

(c) The Early and Periodic Screening, Diagnosis and Treatment Program Periodicity Schedule.

(2) A provider of an EPSDT service shall meet the requirements established in 907 KAR 11:034.

Section 33. Emergency Care, Urgent Care, and Post-Stabilization Care. (1) An MCO shall provide to an enrollee:

(a) Emergency care twenty-four (24) hours a day, seven (7) days a week; and

(b) Urgent care within forty-eight (48) hours.

(2) Post-stabilization services shall be provided and reimbursed in accordance with 42 C.F.R. 422.113(c) and 438.114(e).

Section 34. Maternity Care. An MCO shall:

(1) Have procedures to assure:

(a) Prompt initiation of prenatal care; or
(b) Continuation of prenatal care without interruption for a woman who is pregnant at the time of enrollment;

(2) Provide maternity care that includes:

- (a) Prenatal;
- (b) Delivery;
- (c) Postpartum care; and

(d) Care for a condition that complicates a pregnancy; and

(3) Perform all the newborn screenings referenced in 902 KAR 4:030.

Section 35. Pediatric Interface. (1) An MCO shall:

(a) Have procedures to coordinate care for a child receiving a school-based health service or an early intervention service; and

(b) Monitor the continuity and coordination of care for the child receiving a service referenced in paragraph (a) of this subsection as part of its quality assessment and performance improvement (QAPI) program referenced in Section 48.

(2) Except when a child's course of treatment is interrupted by a school break, after-school hours, or summer break, an MCO shall not be responsible for a service referenced in subsection (1)(a) of this section.

(3) A school-based health service provided by a school district shall not be covered by an MCO.

(4) A school-based health service provided by a local health department shall be covered by an MCO.

Section 36. Pediatric Sexual Abuse Examination. (1) An MCO shall enroll a provider in its network that has the capacity to perform a forensic pediatric sexual abuse examination.

(2) A forensic pediatric sexual abuse examination shall be conducted for an enrollee at the request of the DCBS.

Section 37. Lock-in Program. (1) An MCO shall have a program to control utilization of:

- (a) Drugs and other pharmacy benefits; and
- (b) Non-emergency care provided in an emergency setting.

(2) The program referenced in subsection (1) of this subsection shall be approved by the department.

Section 38. Pharmacy Benefit Program. (1) An MCO shall:

(a) Have a pharmacy benefit program that shall have:

1. A point-of-sale claims processing service;

2. Prospective drug utilization review;

3. An accounts receivable process;

4. Retrospective utilization review services;

5. Formulary and non-formulary drugs;

6. Prior authorization process for drugs;

7. Pharmacy provider relations;

8. A toll-free call center that shall respond to a pharmacy or a physician prescriber twenty-four (24) hours a day, seven (7) days a week; and

9. A seamless interface with the department's management information system;

(b) Maintain a preferred drug list (PDL);

(c) Provide the following to an enrollee or a provider:

1. PDL information; and

2. Pharmacy cost sharing information; and

(d) Have a Pharmacy and Therapeutics Committee (P&T Committee).

(2)(a) The department shall comply with the drug rebate collection requirement established in 42 U.S.C. 1396b(m)(2)(A)(xiii).

(b) An MCO shall:

1. Cooperate with the department in complying with 42 U.S.C. 1396b(m)(2)(A)(xiii);

2. Assist the department in resolving a drug rebate dispute with a manufacturer; and

3. Be responsible for drug rebate administration in a non-pharmacy setting.

(3) An MCO's P&T committee shall meet and make recommendations to the MCO for changes to the drug formulary.

(4) If a prescription for an enrollee is for a non preferred drug and the pharmacist cannot reach the enrollee's primary care provider or the MCO for approval and the pharmacist determines it necessary to provide the prescribed drug, the pharmacist shall:

(a) Provide a seventy-two (72) hour supply of the prescribed drug; or

(b) Provide less than a seventy-two (72) hour supply of the prescribed drug if request is for less than a seventy-two (72) hour supply.

(5) Cost sharing imposed by an MCO shall not exceed the cost sharing limits established in 907 KAR 1:604.

Section 39. MCO Interface with State Mental Health Agency. An MCO shall:

(1) Meet with the department monthly to discuss:

(a) Serious mental illness and serious emotional disturbance operating definitions;

(b) Priority populations;

(c) Targeted case management and peer support provider certification training and process;

(d) IMPACT Plus program operations;

(e) Satisfaction survey requirements;

(f) Priority training topics;

(g) Behavioral health services hotline; or

(h) Behavioral health crisis services;

(2) Coordinate:

(a) An IMPACT Plus covered service provided to an enrollee in accordance with 907 KAR 3:030;

(b) With the department:

1. An enrollee education process for:

a. Individuals with a serious mental illness; and

b. Children or youth with a serious emotional disturbance; and

2. On establishing a collaborative agreement with a:

a. State-operated or stated-contracted psychiatric hospital; and

b. Facility that provides a service to an individual with a co-occurring behavioral health and developmental and intellectual disabilities; and

(c) With the department and community mental health centers a process for integrating a behavioral health service hotline; and

(3) Provide the department with proposed materials and protocols for the enrollee education referenced in subsection 2(b) of this section.

Section 40. Behavioral Health Services. (1) An MCO shall:

(a) Provide a medically necessary behavioral health service to an enrollee in accordance with the access standards described in

Section 15 of this administrative regulation;

(b) Use the DSM-IV multi-axial classification system to assess an enrollee for a behavioral service;

(c) Have an emergency or crisis behavioral health toll-free hotline staffed by trained personnel twenty-four (24) hours a day, seven (7) days a week; and

(d) Not:

1. Operate one (1) hotline to handle an emergency or crisis call and a routine enrollee call; or

2. Impose a maximum call duration limit.

(2) Staff of a hotline referenced in subsection (1)(c) of this section shall:

(a) Communicate in a culturally competent and linguistically accessible manner to an enrollee; and

(b) Include or have access to a qualified behavioral health professional to assess and triage a behavioral health emergency.

(3) A face-to-face emergency service shall be available:

(a) Twenty-four (24) hours a day; and

(b) Seven (7) days a week.

Section 41. Coordination Between a Behavioral Health Provider and a Primary Care Provider. (1) An MCO shall:

(a) Require a PCP to have a screening and evaluation procedure for the detection and treatment of, or referral for, a known or suspected behavioral health problem or disorder.

(b) Provide training to a PCP in its network on:

1. Screening and evaluate a behavioral health disorder;

2. The MCO's referral process for a behavioral health service;

3. Coordination requirements for a behavioral health service;

and

4. Quality of care standards;

(c) Have policies and procedures that shall be approved by the department regarding clinical coordination between a behavioral health service provider and a PCP;

(d) Establish guidelines and procedures to ensure accessibility, availability, referral, and triage to physical and behavioral health care;

(e) Facilitate the exchange of information among providers to reduce inappropriate or excessive use of psychopharmacological medications and adverse drug reactions;

(f) Identify a method to evaluate continuity and coordination of care; and

(g) Include the monitoring and evaluation of the MCO's compliance with the requirements established in paragraphs (a), (b), (c), and (d) of this subsection in the MCO's quality improvement plan.

(2) With consent from an enrollee or the enrollee's legal guardian, an MCO shall require a behavioral health service provider to:

(a) Refer an enrollee with a known or suspected and untreated physical health problem or disorder to their PCP for examination and treatment; and

(b) Send an initial and quarterly summary report of an enrollee's behavioral health status to the enrollee's PCP.

Section 42. Court-Ordered Psychiatric Services. (1) An MCO shall:

(a) Provide an inpatient psychiatric service to an enrollee under the age of twenty-one (21) and over the age of sixty-five (65), up to the annual limit, who has been ordered to receive the service by a court of competent jurisdiction under the provisions of KRS Chapter 202A and 645;

(b) Not deny, reduce, or negate the medical necessity of an inpatient psychiatric service provided pursuant to a court-ordered commitment for an enrollee under the age of twenty-one (21) or over the age of sixty-five (65);

(c) Coordinate with a provider of a behavioral health service the treatment objectives and projected length of stay for an enrollee committed by a court of law to a state psychiatric hospital; and

(d) Enter into a collaborative agreement with the state-operated or state-contracted psychiatric hospital assigned to the enrollee's region in accordance with 908 KAR 3:040 and in accordance with the *Olmstead* decision.

(2) An MCO shall present a modification or termination of a service referenced in subsection (1)(b) of this section to the court with jurisdiction over the matter for determination.

(3)(a) An MCO behavioral health service provider shall:

1. Participate in a quarterly continuity of care meeting with a state-operated or state-contracted psychiatric hospital;

2. Assign a case manager prior to or on the date of discharge of an enrollee from a facility referenced in subsection (3)(a)1 of this section; and

3. Provide case management services to an enrollee with a severe mental illness and co-occurring developmental disability who is discharged from a:

a. Facility referenced in subsection (3)(a)1 of this section; or

b. State-operated nursing facility for individuals with severe mental illness.

(b) A case manager and a behavioral health service provider shall participate in discharge planning to ensure compliance with the *Olmstead* decision.

Section 43. Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order shall be authorized to act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of a child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 to 387.800 shall be allowed to act on behalf of an enrollee who is a ward of the commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 shall be allowed to act on behalf of an enrollee, potential enrollee, or former enrollee.

(c) An enrollee shall have the right to:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 44. Utilization Management or UM. (1) An MCO shall:

(a) Have a utilization management program that:

1. Meets the requirements established in 42 C.F.R. 456, 42 C.F.R. 431, 42 C.F.R. 438, and the private review agent requirements of KRS 304.17A, as applicable; and

2. Shall:

a. Identify, define, and specify the amount, duration, and scope of each service that the MCO is required to offer;

b. Review, monitor, and evaluate the appropriateness and medical necessity of care and services;

c. Identify and describe the UM mechanisms used to:

(i) Detect the under or over utilization of services; and

(ii) Act after identifying under utilization or over utilization of services;

d. Have a written UM program description; and

e. Be evaluated annually by the:

(i) MCO, including an evaluation of clinical and service outcomes; and

(ii) Department.

(b) Adopt nationally-recognized standards of care and written criteria that shall be:

1. Based upon sound clinical evidence, if available, for making utilization decisions; and

2. Approved by the department;

(c) Include physicians and other health care professionals in the MCO network in reviewing and adopting medical necessity criteria;

(d) Have:

1. A process to review, evaluate, and ensure the consistency with which physicians and other health care professionals involved in UM apply review criteria for authorization decisions;

2. A medical director who:

a. Is a licensed physician and responsible for treatment policies, protocols, and decisions; and

b. Supervises the UM program; and

3. Written policies and procedures that explain how prior au-

thorization data will be incorporated into the MCO's Quality Improvement Plan;

(e) Submit a request for a change in review criteria for authorization decisions to the department for approval prior to implementation;

(f) Administer or use a CAHPS survey to evaluate and report enrollee and provider satisfaction with the quality of, and access to, care and services in accordance with Section 55 of this administrative regulation;

(g) Provide written confirmation of an approval of a request for a service within two (2) business days of providing notification of a decision if:

1. The initial decision was not in writing; and
2. Requested by an enrollee or provider;

(h) If the MCO uses a subcontractor to perform UM, require the subcontractor to have

written policies, procedures, and a process to review, evaluate, and ensure consistency with which physicians and other health care professionals involved in UM apply review criteria for authorization decisions; and

(i) Not provide a financial or other type of incentive to an individual or entity that conducts UM activities to deny, limit, or discontinue a medically necessary service to an enrollee pursuant to 42 C.F.R. 422.208, 42 C.F.R. 438.6(h), and 42 C.F.R. 438.210(e).

(2) A UM program description referenced in subsection (1)(a)2.d. of this section shall:

(a) Outline the UM program's structure;

(b) Define the authority and accountability for UM activities, including activities delegated to another party; and

(c) Include the:

1. Scope of the program;

2. Processes and information sources used to determine service coverage, clinical necessity, and appropriateness and effectiveness;

3. Policies and procedures to evaluate:

a. Care coordination;

b. Discharge criteria;

c. Site of services;

d. Levels of care;

e. Triage decisions; and

f. Cultural competence of care delivery; and

4. Processes to review, approve, and deny services as needed.

(3) Only a physician with clinical expertise in treating an enrollee's medical condition or disease shall be authorized to make a decision to deny a service authorization request or authorize a service in an amount, duration, or scope that is less than requested by the enrollee.

(4) A medical necessity review process shall be in accordance with Section 45 of this administrative regulation.

Section 45. Service Authorization and Notice. (1) For the processing of a request for initial and continuing authorization of a service, an MCO shall identify what constitutes medical necessity and establish a written policy and procedure, which includes a timeframe for:

(a) Making an authorization decision; and

(b) If the service is denied or authorized in an amount, duration, or scope which is less than requested, providing a notice to an enrollee and provider acting on behalf of and with the consent of an enrollee.

(2) For an authorization of a service, an MCO shall make a decision:

(a) As expeditiously as the enrollee's health condition requires; and

(b) Within two (2) business days following receipt of a request for service.

(3) The timeframe for making an authorization decision referenced in subsection (2) of this section may be extended:

(a) By the:

1. Enrollee, or the provider acting on behalf of and with content of an enrollee, if the enrollee requests an extension; or

2. MCO, if the MCO:

a. Justifies to the department, upon request, a need for addi-

tional information and how the extension is in the enrollee's interest;

b. Gives the enrollee written notice of the extension, including the reason for extending the authorization decision timeframe and the right of the enrollee to file a grievance if the enrollee disagrees with that decision; and

c. Makes and carries out the authorization decision as expeditiously as the enrollee's health condition requires and no later than the date the extension expires; and

(b) Up to fourteen (14) additional calendar days.

(4) If an MCO denies a service authorization or authorizes a service in an amount, duration, or scope which is less than requested, the MCO shall provide:

(a) A notice to the:

1. Enrollee, in writing, as expeditiously as the enrollee's condition requires and within two (2) business days of receipt of the request for service; and

2. Requesting provider, if applicable;

(b) For an adverse action relating to medical necessity and a coverage denial, a notice to the enrollee, which shall:

1. Meet the language and formatting requirements established in 42 C.F.R. 438.404;

2. Include the:

a. Action the MCO or its subcontractor, if applicable, has taken or intends to take;

b. Reason for the action;

c. Right of the enrollee or provider who is acting on behalf of the enrollee to file an MCO appeal;

d. Right of the enrollee to request a state fair hearing;

e. Procedure for filing an appeal and requesting a state fair hearing;

f. Circumstance under which an expedited resolution is available and how to request it; and

g. Right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstance under which the enrollee may be required to pay the costs of these services; and

3. Be provided:

a. At least ten (10) days before the date of action if the action is a termination, suspension, or reduction of a covered service authorized by the department, department designee, or enrollee's MCO, except the department may shorten the period of advance notice to five (5) days before the date of action because of probable fraud by the enrollee;

b. By the date of action for the following:

(i) The death of a member;

(ii) A signed written enrollee statement requesting service termination or giving information requiring termination or reduction of services in which the enrollee understands this must be the result of supplying the information;

(iii) The enrollee's address is unknown and mail directed to the enrollee has no forwarding address;

(iv) The enrollee has been accepted for Medicaid services by another local jurisdiction;

(v) The enrollee's admission to an institution results in the enrollee's ineligibility for more services;

(vi) The enrollee's physician prescribes a change in the level of medical care;

(vii) An adverse decision has been made regarding the preadmission screening requirements for a nursing facility admission, pursuant to 907 KAR 1:755, on or after January 1, 1989; and

(viii) The safety or health of individuals in a facility would be endangered, if the enrollee's health improves sufficiently to allow a more immediate transfer or discharge, an immediate transfer or discharge is required by the enrollee's urgent medical needs, or an enrollee has not resided in the nursing facility for thirty (30) days;

c. On the date of action, if the action is a denial of payment;

d. As expeditiously as the enrollee's health condition requires and within two (2) business days following receipt of a request;

e. When the MCO carries out its authorization decision, as expeditiously as the enrollee's health condition requires and no later than the date the extension as identified in subsection (3) of this section expires;

f. If a provider indicates or the MCO determines that following

the standard timeframe could seriously jeopardize the enrollee's life or health, or ability to attain, maintain or regain maximum function, as expeditiously as the enrollee's health condition requires and no later than two (2) business days after receipt of the request for service; and

g. For an authorization decision not made within the timeframe identified in subsection (2) of this section, on the date the timeframe expires as this shall constitute a denial.

Section 46. Health Risk Assessment. An MCO shall:

(1) Conduct an initial health risk assessment of an enrollee at the implementation of the MCO program within 180 days from enrolling the individual;

(2) After the initial implementation of the MCO program, conduct an initial health risk assessment of an enrollee within ninety (90) days of enrolling the individual if the individual has not been enrolled with the MCO in a prior twelve (12) month period;

(3) Use health care professionals in the health risk assessment process;

(4) Screen an enrollee who it believes to be pregnant within thirty (30) days of enrollment;

(5) If an enrollee is pregnant, refer the enrollee for prenatal care;

(6) Use a health risk assessment to determine an enrollee's need for:

- (a) Care management;
- (b) Disease management;
- (c) A behavioral health service;
- (d) A physical health service or procedure; or
- (e) A community service.

Section 47. Care Coordination and Management. An MCO shall:

(1) Have a care coordinator and a case manager to arrange, assure delivery of, monitor, and evaluate care, treatment, and services for an enrollee;

(2) Have guidelines for care coordination that shall be approved by the department prior to implementation;

(3) Develop a plan of care for an enrollee in accordance with 42 C.F.R. 438.208;

(4) Have policies and procedures to ensure access to care coordination for a DCBS client or a DAIL client;

(5) Provide information on and coordinate services with the Women, Infants and Children program; and

- (6) Provide information to an enrollee and a provider regarding:
 - (a) An available care management service; and
 - (b) How to obtain a care management service.

Section 48. Quality Assessment and Performance Improvement (QAPI) Program. An MCO shall:

(1) Have a quality assessment and performance improvement (QAPI) program that shall:

- (a) Conform to the requirements of 42 C.F.R. 438, subpart D;
- (b) Assess, monitor, evaluate, and improve the quality of care provided to an enrollee;

(c) Provide for the evaluation of:

- 1. Access to care;
- 2. Continuity of care;
- 3. Health care outcomes; and
- 4. Services provided or arranged for by the MCO;

(d) Demonstrate the linkage of Quality Improvement (QI) activities to findings from a quality evaluation; and

(e) Be developed in collaboration with input from enrollees;

(2) Submit annually to the department a description of its QAPI program;

(3) Conduct and submit to the department an annual review of the program;

(4) Maintain documentation of:

- (a) Enrollee input;
- (b) Response;
- (c) A performance improvement activity; and
- (d) MCO feedback to an enrollee;

(5)(a) Have or obtain within four (4) years of initial implementation National Committee for Quality Assurance (NCQA) accreditation

for its Medicaid product line; and;

(b) After obtaining NCQA accreditation, maintain the accreditation;

(6) If the MCO has NCQA accreditation:

(a) Submit to the department a copy of its current certificate of accreditation with a copy of the complete accreditation survey report; and

(b) Maintain the accreditation;

(7) Integrate behavioral health service indicators into its QAPI program;

(8) Include a systematic, on-going process for monitoring, evaluating, and improving the quality and appropriateness of a behavioral health service provided to an enrollee;

(9) Collect data, monitor, and evaluate for evidence of improvement to a physical health outcome resulting from integration of behavioral health into an enrollee's care; and

(10) Annually review and evaluate the effectiveness of the QAPI program.

Section 49. Quality Assessment and Performance Improvement Plan. (1) An MCO shall:

(a) Have a written QAPI work plan that:

- 1. Outlines the scope of activities;
- 2. Is submitted quarterly to the department; and
- 3. Sets goals, objectives, and timelines for the QAPI program;

(b) Set new goals and objectives:

- 1. At least annually; and
- 2. Based on a finding from:
 - a. A quality improvement activity or study;
 - b. A survey result;
 - c. A grievance or appeal;
 - d. A performance measure; or
 - e. The External Quality Review Organization;

(c) Be accountable to the department for the quality of care provided to an enrollee;

(d) Obtain approval from the department for its QAPI program and annual QAPI work plan;

(e) Have an accountable entity within the MCO:

- 1. To provide direct oversight of its QAPI program; and
- 2. That shall review reports from the quality improvement committee referenced in paragraph (h) of this subsection;

(f) Review its QAPI program annually;

(g) Modify its QAPI program to accommodate a review finding or concern of the MCO if a review finding or concern occurs;

(h) Have a quality improvement committee that shall:

- 1. Be responsible for the QAPI program;
- 2. Be interdisciplinary;
- 3. Include:

- a. Providers and administrative staff; and
- b. Health professionals with knowledge of and experience with individuals with special health care needs;

4. Meet on a regular basis;

5. Document activities of the committee;

6. Make committee minutes and a committee report available to the department upon request; and

7. Submit a report to the accountable entity referenced in paragraph (c) of this subsection that shall include:

- a. A description of the QAPI activities;
- b. Progress on objectives; and
- c. Improvements made;

(i) Require a provider to participate in QAPI activities in the provider agreement or subcontract; and

(j) Provide feedback to a provider or a subcontractor regarding integration of or operation of a corrective action necessary in a QAPI activity if a corrective action is necessary.

(2) If a QAPI activity of a provider or a subcontractor is separate from an MCO's QAPI program, the activity shall be integrated into the MCO's QAPI program.

Section 50. QAPI Monitoring and Evaluation. (1) Through its QAPI program an MCO shall:

(a) Monitor and evaluate the quality of health care provided to an enrollee;

(b) Study and prioritize health care needs for performance measurement, performance improvement, and development of practice guidelines;

(c) Use a standardized quality indicator:

1. To assess improvement, assure achievement of at least a minimum performance level, monitor adherence to a guideline, and identify a pattern of over and under utilization of a service; and

2. Which shall be:

a. Supported by a valid data collection and analysis method; and

b. Used to improve clinical care and services;

(d) Measure a provider performance against a practice guideline and a standard adopted by the quality improvement committee;

(e) Use a multidisciplinary team to analyze and address data and systems issues; and

(f) Have practice guidelines that shall:

1. Be:

a. Disseminated to a provider, or upon request, to an enrollee;

b. Based on valid and reliable medical evidence or consensus of health professionals;

c. Reviewed and updated; and

d. Used by the MCO in making a decision regarding utilization management, a covered service and enrollee education;

2. Consider the needs of enrollees; and

3. Include consultation with network providers.

(2) If an area needing improvement is identified by the QAPI program, the MCO shall take a corrective action and monitor the corrective action for improvement.

Section 51. Quality and Member Access Committee. (1) An MCO shall:

(a) Have a Quality and Member Access Committee (QMAC) composed of:

1. Enrollees who shall be representative of the enrollee population; and

2. Individuals from consumer advocacy groups or the community who represent the interests of enrollees in the MCO; and

(b) Submit to the department annually a list of enrollee representatives participating in the QMAC.

(2) A QMAC committee shall be responsible for reviewing:

(a) Quality and access standards;

(b) The grievance and appeals process;

(c) Policy modifications needed based on reviewing aggregate grievance and appeals data;

(d) The member handbook;

(e) Enrollee education materials;

(f) Community outreach activities; and

(g) MCO and department policies that affect enrollees.

Section 52. External Quality Review. (1) In accordance with 42 U.S.C. 1396a(a)(30), the department shall have an independent external quality review organization (EQRO) annually review the quality of services provided by an MCO.

(2) An MCO shall:

(a) Provide information to the EQRO as requested to fulfill the requirements of the mandatory and optional activities required in 42 C.F.R. Parts 433 and 438; and

(b) Cooperate and participate in external quality review activities in accordance with the protocol established in 42 C.F.R. 438 subpart E.

(3) The department shall have the option of using information from a Medicare or private accreditation review of an MCO in accordance with 42 C.F.R. 438.360.

(4) If an adverse finding or deficiency is identified by an EQRO conducting an external quality review, an MCO shall correct the finding or deficiency.

Section 53. Health Care Outcomes. An MCO shall:

(1) Comply with the requirements established in 42 C.F.R. 438.240 relating to quality assessment and performance improvement;

(2) Collaborate with the department to establish a set of unique Kentucky Medicaid managed care performance measures which

shall:

(a) Be aligned with national and state preventive initiatives; and

(b) Focus on improving health;

(3) In collaboration with the department and the EQRO, develop a performance measure specific to individuals with special health care needs;

(4) Report activities on performance measures in the QAPI work plan referenced in Section 49 of this regulation;

(5) Submit an annual report to the department after collecting performance data which shall be stratified by:

(a) Medicaid eligibility category;

(b) Race;

(c) Ethnicity;

(d) Gender; and

(e) Age;

(6) Collect and report HEDIS data annually; and

(7) Submit to the department:

(a) The final auditor's report issued by the NCQA certified audit organization;

(b) A copy of the interactive data submission system tool used by the MCO; and

(c) The reports specified in MCO Reporting Requirements.

Section 54. Performance Improvement Projects (PIPs). (1) An MCO shall:

(a) Implement PIPs to address aspects of clinical care and non-clinical services;

(b) Collaborate with local health departments, behavioral health agencies, and other community-based health or social service agencies to achieve improvements in priority areas;

(c) Initiate a minimum of two (2) PIPs each year with at least one (1) PIP relating to physical health and at least one (1) PIP relating to behavioral health;

(d) Report on a PIP using standardized indicators;

(e) Specify a minimum performance level for a PIP; and

(f) Include the following for a PIP:

1. The topic and its importance to enrolled members;

2. Methodology for topic selection;

3. Goals of the PIP;

4. Data sources and collection methods;

5. An intervention; and

6. Results and interpretations.

(2) A clinical PIP shall address preventive and chronic healthcare needs of enrollees including:

(a) The enrollee population;

(b) A subpopulation of the enrollee population; and

(c) Specific clinical need of enrollees with conditions and illnesses that have a higher prevalence in the enrolled population.

(3) A non-clinical PIP shall address improving the quality, availability, and accessibility of services provided by an MCO to enrollees and providers.

(4) The department may require an MCO to implement a PIP specific to the MCO if:

(a) A finding from an EQRO review referenced in Section 52 or an audit indicates a need for a PIP; or

(b) Directed by CMS.

(5) The department shall be authorized to require an MCO to assist in a statewide PIP which shall be limited to providing the department with data from the MCO's service area.

Section 55. Enrollee and Provider Surveys. (1) An MCO shall:

(a) Conduct an annual survey of enrollee and provider satisfaction of the quality and accessibility to a service provided by an MCO;

(b) Satisfy a member satisfaction survey requirement by participating in the Agency for Health Research and Quality's current Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) for Medicaid Adults and Children, which shall be administered by an NCQA-certified survey vendor;

(c) Provide a copy of the current CAHPS survey referenced in paragraph (b) of this subsection to the department;

(d) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;

(e) Submit to the department for approval the survey tool used

to conduct the survey referenced in paragraph (a) of this subsection; and

(f) Provide to the department:

1. A copy of the results of the enrollee and provider surveys referenced in paragraph (a) of this subsection;

2. A description of a methodology to be used to conduct surveys;

3. The number and percentage of enrollees and providers surveyed;

4. Enrollee and provider survey response rates;

5. Enrollee and provider survey findings; and

6. Interventions conducted or planned by the MCO related to activities in this section.

(2) The department shall:

(a) Approve enrollee and provider survey instruments prior to implementation; and

(b) Approve or disapprove an MCO's provider survey tool within fifteen (15) days of receipt of the survey tool.

(3) If an MCO conducts a survey that targets a subpopulation's perspective or experience with access, treatment, and services, the MCO shall comply with the requirements established in subsection (1)(e) and (f) of this section.

Section 56. Prompt Payment of Claims (1) In accordance with 42 U.S.C. 1396a(a)(37), an MCO shall:

(a) Implement claims payment procedures that ensure that:

1. Ninety (90) percent of all provider claims for which no further written information or substantiation is required in order to make payment are paid or denied within thirty (30) days of the date of receipt of the claims; and

2. Ninety nine (99) percent of all claims are processed within ninety (90) days of the date of receipt of the claims; and

(b) Have prepayment and postpayment claims review procedures that ensure the proper and efficient payment of claims and management of the program.

(2) An MCO shall:

(a) Comply with the prompt payment provisions established in:

1. 42 C.F.R. 447.45; and

2. KRS 205.593, KRS 304.14-135, and KRS 304.17A-700-730; and

(b) Notify a requesting provider of a decision to:

1. Deny a claim; or

2. Authorize a service in an amount, duration, or scope that is less than requested.

(3) The payment provisions in this section shall apply to a payment to:

(a) A provider within the MCO network; and

(b) An out-of-network provider.

Section 57. Payments to an MCO. (1) The department shall provide an MCO a per enrollee, per month capitation payment whether or not the enrollee receives a service during the period covered by the payment except for an enrollee whose eligibility is determined due to being unemployed in accordance with 45 C.F.R. 233.100.

(2) The monthly capitation payment for an enrollee whose eligibility is determined due to being unemployed, shall be prorated from the date of eligibility.

(3) A capitation rate referenced in subsection (1) of this section shall:

(a) Meet the requirements of 42 C.F.R. 438.6(c); and

(b) Be approved by the Centers for Medicare and Medicaid Services; and

(4)(a) The department shall apply a risk adjustment to a capitation rate referenced in subsection (4) of this section in an amount that shall be budget neutral to the department.

(b) The department shall use the latest version of the Chronic Illness and Disability Payment System to determine the risk adjustment referenced in paragraph (a) of this subsection.

Section 58. Recoupment of Payment from an Enrollee for Fraud, Waste and Abuse.

(1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the

CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee referenced in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund referenced in subsection (2) of this section within six (6) months, the commonwealth shall have the right to recover the refund.

Section 59. MCO Administration. An MCO shall have executive management responsible for operations and functions of the MCO that shall include:

(1) An executive director who shall:

(a) Act as a liaison to the department regarding a contract between the MCO and the department;

(b) Be authorized to represent the MCO regarding an inquiry pertaining to a contract between the MCO and the department;

(c) Have decision making authority; and

(d) Be responsible for following up regarding a contract inquiry or issue;

(2) A medical director who shall be:

(a) A physician licensed to practice medicine in Kentucky;

(b) Actively involved in all major clinical programs and quality improvement components of the MCO; and

(c) Available for after-hours consultation;

(3) A dental director who shall be:

(a) Licensed by a dental board of licensure in any state;

(b) Actively involved in all oral health programs of the MCO; and

(c) Available for after-hours consultation;

(4)(a) A finance officer who shall oversee the MCO's budget and accounting systems; and

(b) An internal auditor who shall ensure compliance with adopted standards and review expenditures for reasonableness and necessity;

(5) A quality improvement director who shall be responsible for the operation of:

(a) The MCO's quality improvement program; and

(b) A subcontractor's quality improvement program;

(6) A behavioral health director who shall be:

(a) A behavioral health practitioner;

(b) Actively involved in all of the MCO's programs or initiatives relating to behavioral health; and

(c) Responsible for the coordination of behavioral health services provided by the MCO or any of its behavioral health subcontractors;

(7) A case management coordinator who shall be responsible for coordinating and overseeing case management services and continuity of care for MCO enrollees;

(8) An early and periodic screening, diagnosis, and treatment (EPSDT) coordinator who shall coordinate and arrange for the provision of EPSDT services and EPSDT special services for MCO enrollees;

(9) A foster care and subsidized adoption care liaison who shall serve as the MCO's primary liaison for meeting the needs of an enrollee who is:

(a) A child in foster care; or

(b) A child receiving state-funded adoption assistance;

(10) A guardianship liaison who shall serve as the MCO's primary liaison for meeting the needs of an enrollee who is a ward of the commonwealth;

(11) A management information systems director who shall oversee, manage, and maintain the MCO's management information system;

(12) A program integrity coordinator who shall coordinate, manage, and oversee the MCO's program integrity functions;

(13) A pharmacy director who shall coordinate, manage, and oversee the MCO's pharmacy program;

(14) A compliance director who shall be responsible for the MCO's:

(a) Financial and programmatic accountability, transparency, and integrity; and

(b) Compliance with:

1. All applicable federal and state law;

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2. Any administrative regulation promulgated by the department relating to the MCO; and

3. The requirements established in the contract between the MCO and the department;

(15) A member services director who shall:

(a) Coordinate communication with MCO enrollees; and

(b) Respond in a timely manner to an enrollee seeking a resolution of a problem or inquiry;

(16) A provider services director who shall:

(a) Coordinate communication with MCO providers and sub-contractors; and

(b) Respond in a timely manner to a provider seeking a resolution of a problem or inquiry; and

(17) A claims processing director who shall ensure the timely and accurate processing of claims.

Section 60. MCO Reporting Requirements. An MCO shall:

(1) Submit to the department a report as required by MCO Reporting Requirements;

(2) Verify the accuracy of data and information on a report submitted to the department;

(3) Analyze a required report to identify an early pattern of change, a trend, or an outlier before submitting the report to the department; and

(4) Submit the analysis required in subsection (3) of this section with a required report.

Section 61. Health Care Data Submission and Penalties. (1)(a) An MCO shall submit an original encounter record and denial encounter record, if any, to the department weekly.

(b) An original encounter record or a denial encounter record shall be considered late if not received by the department within four (4) calendar days from the weekly due date.

(c) Beginning on the fifth calendar day late, the department shall withhold \$500 per day for each day late from an MCO's total capitation payments for the month following non submission of an original encounter record and denial encounter record.

(2)(a) If an MCO fails to submit health care data derived from processed claims or encounter data in a form or format established in the MCO Reporting Requirements for one (1) calendar month, the department shall withhold an amount equal to five (5) percent of the MCO's capitation payment for the month following non submission.

(b) The department shall retain the amount referenced in paragraph (a) of this subsection until the data is received and accepted by the department, less \$500 per day for each day late.

(3)(a) The department shall transmit to an MCO an encounter record with an error for correction by the MCO.

(b) An MCO shall have ten (10) days to submit a corrected encounter record to the department.

(c) If an MCO fails to submit a corrected encounter record within the time frame specified in paragraph (b) of this subsection, the department shall be able to assess and withhold for the month following the non submission, an amount equal to one-tenth of a percent of the MCO's total capitation payments per day until the corrected encounter record is received and accepted by the department.

Section 62. Program Integrity. An MCO shall comply with:

(1) 42 C.F.R. 438.608;

(2) 42 U.S.C. 1396a(a)(68); and

(3) The requirements established in the MCO Program Integrity Requirements.

Section 63. Third Party Liability and Coordination of Benefits.

(1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

(a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;

(b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;

(c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42

C.F.R. 433.138; and

(d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.

(3) In accordance with 907 KAR 1:011 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, the enrollee's rights to an MCO for a medical support or payment from a third party for a medical service provided by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that shall be liable to pay for a service provided by the MCO.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

(5) An MCO shall have a process for third party liability and coordination of benefits in accordance with Third Party Liability and Coordination of Benefits.

Section 64. Management Information System. (1) An MCO shall:

(a) Have a management information system that shall:

1. Provide support to the MCO operations; and

2. Include a:

a. Member subsystem;

b. Third party liability subsystem;

c. Provider subsystem;

d. Reference subsystem;

e. Claim processing subsystem;

f. Financial subsystem;

g. Utilization and quality improvement subsystem; and

h. Surveillance utilization review subsystem; and

(b) Transmit data to the department:

1. In accordance with 42 C.F.R. 438; and

2. The Management Information System Requirements.

(2) If an MCO subcontracts for services, the MCO shall provide guidelines for its subcontractor to the department for approval.

Section 65. Kentucky Health Information Exchange (KHIE). (1) An MCO shall:

(a) Submit to the KHIE:

1. An adjudicated claim within twenty-four (24) hours of the final claim adjudication; and

2. Clinical data as soon as it is available;

(b) Make an attempt to have a PCP in the MCO's network connect to KHIE within:

1. One (1) year of enrollment in the MCO's network; or

2. A timeframe approved by the department if greater than one (1) year; and

(c) Encourage a provider in its network to establish connectivity with the KHIE.

(2) The department shall:

(a) Administer an electronic health record incentive payment program; and

(b) Inform an MCO of a provider that has received an electronic health record incentive payment.

Section 66. MCO Qualifications and Maintenance of Records.

(1) An MCO shall:

(a) Be licensed by the Department of Insurance as a health maintenance organization or an insurer;

(b) Have a governing body;

(c) Have protection against insolvency in accordance with:

1. 806 KAR 3:190; and

2. 42 C.F.R. 438.116;

(d) Maintain all books, records, and information related to MCO providers, recipients, or recipient services, and financial transactions for:

1. A minimum of five (5) years in accordance with 907 KAR 1:672; and

2. Any additional time period as required by federal or state law; and

(e) Submit a request for disclosure of information from the public to the department within twenty-four (24) hours.

(2) No information shall be disclosed by an MCO pursuant to a

request it received without prior written authorization from the department.

(3) The books, records, and information referenced in subsection (1)(d) of this section, shall be available upon request of a reviewer or auditor during routine business hours at the MCO's place of operations.

(4) MCO staff shall be available upon request of a reviewer or auditor during routine business hours at the MCO's place of operations.

Section 67. Prohibited Affiliations. The policies or requirements:

(1) Imposed on a managed care entity in 42 U.S.C. 1396u-2(d)(1) shall apply to an MCO; and

(2) Established in 42 C.F.R. 438.610 shall apply to an MCO.

Section 68. Termination of MCO Participation in the Medicaid Program. The department shall terminate an MCO Participation in accordance with KRS Chapter 45A.

Section 69. Incorporation by Reference. (1) The following is incorporated by reference into this administrative regulation:

(a) The "MCO Reporting Requirements", July 2011 edition;

(b) The "MCO Program Integrity Requirements", July 2011 edition;

(c) The "Early and Periodic Screening, Diagnosis and Treatment Program Periodicity Schedule", July 2011 edition;

(d) The "Third Party Liability and Coordination of Benefits", July 2011 edition; and

(e) The "Management Information Systems Requirements", July 2011 edition.

(2) The material referenced in subsection (1) of this section shall be available at:

(a) <http://www.chfs.ky.gov/dms/incorporated.htm>; or

(b) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 28, 2011

FILED WITH LRC: October 28, 2011 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Wanda Fowler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) Region three (3) is comprised of Jefferson County and fifteen (15) other counties neighboring or nearby Jefferson County. Under managed care, each Medicaid recipient (except for those excluded from managed care participation) residing outside of region three (3) will be given a choice of enrolling with one (1) of three (3) managed care organizations (MCOs) for the purpose of receiving Medicaid services and benefits. The three (3) MCOs are CoventryCares, Kentucky Spirit Health Plan and WellCare. Recipients residing in region three (3) will remain under the responsibility of the managed care organization, Passport Health Plan, that currently serves that region. Individuals who fail to choose an MCO will be assigned to one by the Department for Medicaid Services. Some individuals, including recipients residing in a nursing facility or in an intermediate care facility for individuals with mental retardation or a developmental disability, individuals receiving services through a home and community based waiver (or "1915c waiver"), individuals eligible for Medicare and certain categories of children under age nineteen (19), to name a few, will be excluded from managed care enrollment. The excluded individuals will remain under the umbrella of the Kentucky Medicaid "fee-for-service" reimbursement/delivery

model. The proposed changes under the waiver and any necessary plan revisions will be contingent upon the approval of the Centers for Medicare and Medicaid Services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) Transforming the majority of the Medicaid program from a fee-for-service model into a managed care model is necessary to improve quality of care, facilitate access to care, and to effectively manage costs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) DMS anticipates that this action will effectively manage costs while enhancing service quality and facilitating access to care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) DMS anticipates that this action will effectively manage costs while enhancing service quality and facilitating access to care.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid providers, Medicaid recipients (except those excluded from managed care) and the three (3) managed care organizations providing Medicaid covered services under contract with the Commonwealth will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid recipients who participate in managed care must either choose a managed care organization or be assigned to one (1) if they fail to choose one (1) within the time period required. Managed care organizations will be responsible for providing Medicaid covered services to recipients enrolled with them. In order to be reimbursed for providing care (covered under managed care) to Medicaid recipients, providers must enroll with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients should benefit from the following components of managed care: coordinated care, a medical home focused on improving health outcomes, a plan of care which coordinates physical and behavioral health, and the MCO emphasis on wellness and prevention. Managed care organizations will benefit by receiving payments from DMS pursuant to their contract with the Commonwealth.

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

(a) Initially: Rather than increase expenditures, DMS estimates that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$281.6 million (state and federal combined) in state fiscal year (SFY) 2012 with a November 1, 2011 implementation. The impact on the Medicaid

budget for SFY 2012 takes into consideration the one-time incurred claims cost for Medicaid recipients enrolled in managed care for services received by them prior to November 1, 2011 as well as other factors.

(b) On a continuing basis: DMS projects that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$464.1 million (state and federal combined) in SFY 2013 and \$552.5 million (federal and state combined) in SFY 2014. These estimates may vary from the actual enrollment and are subject to change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

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

(9) Tiering: Is tiering applied? Tiering is applied in that certain individuals are excluded from managed care enrollment. Federal regulation or law excludes the individuals from being enrolled into managed care.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. A managed care program is not federally mandated for Medicaid programs.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. A managed care program is not federally mandated for Medicaid programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this change relates to provision of managed care but does not impose additional or stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A managed care method of administering the program is being implemented but stricter requirements are not imposed. A managed care program is not federally mandated for Medicaid programs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation. Additionally, county-owned hospitals, university hospitals, local health departments, and primary care centers owned by government entities will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 438 and this administrative regulation authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Rather than increase expenditures, DMS estimates that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$281.6 million (state and federal combined) in state fiscal year (SFY) 2012 with a November 1, 2011 implementation. The impact on the Medicaid budget for SFY 2012 takes into consideration the one-time incurred claims cost for Medicaid recipients enrolled in managed care for services received by them prior to November 1, 2011 as well as other factors.

(d) How much will it cost to administer this program for subsequent years? DMS projects that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$464.1 million (state and federal combined) in SFY 2013 and \$552.5 million (federal and state combined) in SFY 2014. These estimates may vary from the actual enrollment and are subject to change.

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

PERSONNEL BOARD
(As Amended at ARRS, November 7, 2011)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), 18A.0751(1), (4), 18A.115(4)
STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement, [and] reemployment, and discipline. KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service. This administrative regulation establishes the method for determining an employee's work station, and the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

Section 1. Definition.~~[Definitions.]~~ "Class series" means a group of positions that are similar as to the duties performed and have:

- (1) Varying levels of:
 - (a) Discretion;
 - (b) Responsibility; and
 - (c) Minimum requirements of training, experience, or skill; and
- (2) Schedules of compensation that are commensurate with minimum requirements.

Section 2. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.

(3) Except as provided by Sections 3, 4, and 5 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his or her work station if the:

- (a) Site is within the employee's~~his~~ county of employment; and
- (b) Assignment is not a transfer, demotion, or reinstatement.

Section 3. Demotion. (1) A demotion for cause shall be intra-agency.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer/Demotion/ Salary Retention Agreement ~~[or Voluntary Demotion]~~ Form prescribed by the Personnel Cabinet.

(b) The form shall include:

1. A statement of the reason for the request;
2. The effective date of the demotion;
3. The position from which the employee~~he~~ requests demotion;
4. The position to which the employee~~he~~ will be demoted; and
5. A statement that the employee waives the~~his~~ right to appeal the demotion.

(c) The agency~~employee~~ shall forward a copy of the request to the Secretary of Personnel.

(3) A voluntary demotion shall be interagency or intra-agency.

Section 4. Transfers. (1) The transfer of an employee with status shall conform to the requirements established in this section.

(2)(a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall:

1. Indicate that the employee:

a. [state the:

1. Employee] Has been selected for transfer; and

b. Is required to report to the new work station; and

2. State the:

a. [2.] New work station;

b. [3.] Reason for the transfer;

c. [4. Employee is required to report to the new work station;

5.] Effective date of the transfer; and

d. [6.] Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Secretary of Personnel.

(d) An employee shall report to the new work station upon the date specified in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee shall be entitled to travel and moving expenses as provided by 200 KAR 2:006;

(b) An employee shall receive a written notice of involuntary transfer at least thirty (30) days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to:

a. Reimbursement of travel expenses incurred within thirty (30) days of the effective date of the notice; and

b. Moving expenses, if any.

(5) An involuntary transfer shall be intra-agency.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer/Demotion/ Salary Retention Agreement ~~[or Voluntary Demotion]~~ Form prescribed by the Personnel Cabinet.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the transfer;

3. The position, including identifying number, from which the employee~~he~~ requests a transfer;

4. The position, including identifying number, to which the employee~~he~~ requests a transfer; and

5. A statement that the employee waives the~~his~~ right to appeal the transfer.

(c) The agency~~employee~~ shall forward a copy of the request to the Secretary of Personnel.

(7) A voluntary transfer shall be interagency or intra-agency.

Section 5. Reinstatement. (1) A request for reinstatement shall be submitted by the appointing authority to the secretary of Personnel.

(2) The request shall include a finding that the candidate for reinstatement:

(a) Meets the current qualifications for the job classification to which the employee~~he~~ is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a classification outside of the clas-

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sification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

(4) The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

Section 6. Written Reprimand. (1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years.

(a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee, and be dated and signed; and
2. Include the following information:

a. The employee's current position, agency, work phone number, and work address;

b. The employee's immediate supervisor at the time of the petition for removal;

c. The date the written reprimand was issued;

d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and

e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided a copy of the petition to the employee's current appointing authority.

(c) The petition for removal shall be mailed by first-class mail or hand-delivered to the office of the Personnel Cabinet Secretary.

(2) A petition for removal of a written reprimand shall be subject to the approval of the Personnel Cabinet Secretary.

(a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) days of receipt of the petition.

(b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

(c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

(3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as **established in this subsection**~~follows~~.

(a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.

(b) The Office of Legal Services shall maintain the document as confidential work-product materials for the availability or use in any future legal proceeding.

(c) If no legal proceeding **involving the employee's personnel file** has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.

Section 7. Incorporation by Reference. (1) "Voluntary Transfer/~~Demotion~~/ Salary Retention Agreement [or Voluntary Demotion]" Form", March 2011 [04-15-94], Personnel Cabinet, is incorporated by reference.

(2) This material [It] may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, State Office Building 501 High Street, 3rd Floor [Room 531, 5th Floor, 200 Fair Oaks Lane], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. ~~to~~through [to] 4:30 p.m.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 3 p.m.

CONTACT PERSON: Boyce A. Crocker, General Counsel,

Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693.

**PERSONNEL CABINET
Office of the Secretary
(As Amended at ARRS, November 7, 2011)**

101 KAR 2:210. 2012 [2014] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2012 [2014] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2012 [2014] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to ~~the~~ public employees covered ~~under~~and the self-insured plan.

Section 2. Incorporation by Reference. (1) "2012 [2014] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2012 [2014] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 10 a.m.

CONTACT PERSON: Joe R. Cowles, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, November 7, 2011)**

105 KAR 1:440. Kentucky Retirement Systems Trustee Education Program.

RELATES TO: KRS 61.645(18)

STATUTORY AUTHORITY: KRS 61.645(9)(g) and KRS 61.645(18)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(18) ~~requires~~provides that the board ~~to~~ shall establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference in an administrative regulation. This administrative regulation establishes the Kentucky Retirement Systems Trustee Education Program.

Section 1. Each trustee shall comply with the Kentucky Retirement Systems Trustee Education Program.

Section 2. Incorporation by Reference. (1) The "Kentucky Retirement Systems Trustee Education Program", adopted August 18, 2011, [November 20, 2008,] is incorporated by reference.

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

JENNIFER L. ELLIOTT, Chair

APPROVED BY AGENCY: August 18, 2011

FILED WITH LRC: August 25, 2011 at noon

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

**GENERAL GOVERNMENT CABINET
Kentucky State Board Of Accountancy
(As Amended at ARRS, November 7, 2011)**

201 KAR 1:160. Peer reviews.

RELATES TO: KRS 325.301(12 [8])

STATUTORY AUTHORITY: KRS 325.240(2), 325.301(12[12] [8])

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.301(12 [8]) requires a firm that performs an audit, review, or compilation to enroll in and complete an approved peer review program. This administrative regulation establishes the standards and procedures that a CPA firm shall follow to comply with the requirements of KRS 325.301(12[8]).

Section 1. **Definitions**[Definition]. (1) "**Peer review Web site**" means a web page operated and maintained by a sponsoring organization on which documents associated with peer reviews performed by that organization's approved agent are posted and made available to the board.

(2) "Sponsoring organization" means an entity administering a peer review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" of the American Institute of Certified Public Accountants. [(2) "**Peer Review Web site**" means a web page operated and maintained by a Sponsoring Organization on which documents associated with peer reviews performed by that organization's approved agent are posted and made available to the board.]

Section 2. **Initial Firm License and Renewal Applications.** (1) If [(a) When] [If] a firm applies to receive an initial license or renew an existing license, it shall advise the board if it performs audits, reviews, or compilations. A firm that indicates it is going to perform or is currently performing one of these services shall submit with its license application:

(a)[4-] Proof from a sponsoring organization that it is currently enrolled in a peer review program; and

(b)[2-] A copy of the firm's most recent peer review report and the sponsoring organization's acceptance letter [that was] received by the firm within three (3) years prior to submitting the application. If the firm has not received a peer review report within the three (3) year time period, it shall notify the board of that fact.

(2)[(b)] Failure to submit proof of enrollment, and, if applicable, a copy of the peer review report and the sponsoring organization's acceptance letter shall result in the:

(a)[4-] Application being ineligible for consideration until proof of enrollment, and, if applicable, the peer review report and the sponsoring organization's acceptance letter is received by the board; and

(b)[2-] The firm being prohibited from providing any audit, review, or compilation services.

(3)[a][(c)4-] A firm that is applying for an initial license or to renew an existing license that received a [an][a(n)] [adverse,] fail, [second successive modified] or second successive pass with deficiencies report within three (3) years prior to submitting the application shall also submit with its license application a copy of:

1.[a-] The firm's letter of [written] response to any of the reports listed in this section [(c)4-] that was sent to the sponsoring organization; [and]

2.[b-] A letter or letters signed by [from] the firm indicating it agrees to take any remedial actions required by the sponsoring organization as a condition of acceptance of the firm's peer review; [c] and

3.[c-] A letter provided by the sponsoring organization notifying the firm that all required remedial actions have been appropriately completed [that describes the current status of deficiencies that comprised the basis for any of the reports listed in (c)4-].

(b)[2-] Peer review documents required by subsection (1) of this section or paragraph (a)1. of this subsection [in Section 2(1)(a) and Section 2(1)(c)1a] shall be made available to the board via a peer review Web site within thirty (30) days of the date of the sponsoring organization's acceptance letter.

(c)[3-] Peer review documents required by paragraph (a)2. of this subsection [in Section 2(1)(c)1b] shall be made available to the board via a peer review Web site within thirty (30) days of the date that the firm signs the [such] letter.

(d)[4-] Peer review documents required by paragraph (a)3. of this subsection [in Section 2(1)(c)1c] shall be made available to the board via a peer review Web site within thirty (30) days of the date of the letter from the sponsoring organization.

(e)[5-] If a sponsoring organization cannot provide access to the peer review documents required by subsection (1) of this section or this subsection [in Section 2(1)(a) and (c)] [Sections 2(1)(a) and 2(1)(c)] via a peer review Web site, the firm shall provide copies of the [such] documents by mail or facsimile within fifteen (15) days of receipt of the applicable document except for the documents required by paragraph (a)2. of this subsection, [in Section 2(1)(c)1b] which shall be submitted within fifteen (15) days of the date the firm signs the [such] letter.

(f)[6-] The board shall review and consider each [any] of the reports listed in this section [(c)4-] the firm's response, and the letter submitted by the firm] to determine if the firm shall be issued a license.

(g)[7-] [3-] If the board decides to issue a license, it may impose restrictions on the firm after taking into consideration the reported deficiencies and any remedial action since the issuance of any of the reports listed in this section [(c)4-].

(h)[8-] If a firm, when initially applying for or renewing its license, advised the board that it does not provide audits, reviews, or compilations [services defined in Section 1 of this administrative regulation] but subsequently begins to provide those [such] services prior to its next license renewal date, the firm shall:

1.[(a)] Immediately notify the board;

2.[(b)] Immediately enroll in a board-approved peer review program;

3.[(c)] Provide evidence of enrollment to the board within thirty (30) days;

4.[(d)] Undergo a peer review within eighteen (18) months of the fiscal year end of the initial engagement performed as described in the sponsoring organization's peer review standards; and

5.[(e)] Submit the peer review documents to the board for its consideration in the manner identified in this section.

Section 3. [(1)(a)] [On or after the effective date of this administrative regulation staff of the board shall review the board records and determine if a firm with a current license is required to be enrolled in a peer review program. If staff determines the firm shall be or is currently enrolled in a peer review program a letter shall be sent to the firm manager advising him or her to submit to the board a copy of its most recent peer review report and letter of acceptance within thirty (30) days from receipt of the letter. Failure to submit a copy of its most recent peer review report and letter of acceptance shall result in the board initiating disciplinary action against the firm's license.]

[(b)] Staff of the board shall review every peer review report and acceptance letter when they are received in the board office. A report graded [characterized] as [unmodified,] pass, or as [modified or] pass with deficiencies that [but] is not [neither of which is] the second successive [such] report with this finding[, the report]

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shall be discarded according to the board's record retention schedule. A [n-adverse,] fail, or a second successive [modified-or] pass with deficiencies peer review report and the firm's responses to the report shall be presented to the board for review and determination of any action to be taken against the firm after taking into consideration:

- (1)[4-] The deficiencies described in the report;
- (2)[2-] The firm's written response to the report that was sent to the sponsoring organization;
- (3)[3-] Any remedial actions required by the sponsoring organization [A letter from the firm that describes the current status of deficiencies that comprised the basis for the report]; and
- (4)[4-] The firm's compliance with the required [Any] remedial actions [instituted by the firm since the issuance of the report].

Section 4. [(1) Upon completion of the process prescribed in Section 3 of this administrative regulation, when in the future a firm receives a peer review report, the firm shall provide the board with a copy of the report within fifteen (15) business days of receiving the report.

(2) If the report is [classified as pass, unmodified, or either pass with deficiencies or modified but neither is a second successive report no further action on the part of the firm or the board is required. Board staff shall dispose of the documents according to its retention schedule.

(3) If the report is classified as adverse, fail, or is a second successive report classified as pass with deficiencies or modified the firm shall submit the acceptance letter for any of the reports from the sponsoring organization to the board for review and determination of any action to be taken against the firm after taking into consideration:

- (a) The deficiencies described in the report;
- (b) The firm's written response to the report that was sent to the sponsoring organization;
- (c) A letter from the firm that describes the current status of deficiencies that comprised the basis for the report; and
- (d) Any remedial action instituted by the firm since the issuance of the report.]

Section 5-] If a firm is granted an extension of time to complete the peer review process, the firm shall immediately submit to the board a copy of a letter from the sponsoring organization that granted the extension.

Section 5 [6]. (1) A sponsoring organization shall report to the board on a quarterly basis the name of every firm enrolled in the peer review program and the name of every firm dropped or terminated from the program since the last quarterly report was provided by the sponsoring organization. This information may also be provided through a peer review Web site.

(2) A sponsoring organization shall bear the costs of verifying that it is operating the program in compliance with the standards for performing peer reviews.

Section 6.[7-] If a firm is not enrolled in an approved peer review program when it enters into an agreement to engage in performing an audit, review or compilation, it shall not continue to work on the engagement until it has:

- (1) Enrolled in an approved peer review program; and
- (2) Submitted to the board a letter of enrollment in an approved peer review program from a sponsoring organization.

Section 8. (1) Documents Available on Web Site. In lieu of submitting a copy of a peer review report and all accompanying documents, a firm manager may notify the board staff that the documents requested are available for viewing and downloading at a specific website.

(2) Board staff may then attempt to obtain a copy of the required documents from the referenced website.

(3) If staff is not able to download a copy of the requested documents the firm manager shall submit the required copy to the board staff. [6][9][.] Exclusion from Peer Review. [The following report or procedure shall be excluded from the peer review process:]

(1) A proposal or other communication that describes the work proposed by a firm or its employees that is a prerequisite to deciding whether to perform an audit, review, or compilation of financial statements shall be excluded from the peer review process. [;-or]

(2) The exclusion from the peer review process provided for in the "Standards for Performing and Reporting on Peer Reviews" regarding compiled financial statement designated for management use only shall not apply. [A letter of engagement or other information prepared by a firm in accordance with the Statements on Standards for Accounting and Review Services (SSARS) No.8 which solely involves preparing compiled financial statements for management use only as described in SSARS-8.]

Section 7[40]. Incorporation by Reference. (1)[(1)-] The following material is incorporated by reference:

(a) [The] "Standards for Performing and Reporting on Peer Reviews," June [January 1-] [2005] 2011, is incorporated by reference.

(2) [;- and
(b) "Statements on Standards for Accounting and Review Services No.8", December 31, 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the office of the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) These standards are also located on a Web site[website] maintained by the American Institute of Certified Public Accountants at www.aicpa.org.

JOSEPH HANCOCK, CPA, President

APPROVED BY AGENCY: September 12, 2011

FILED WITH LRC: September 15, 2011 at noon

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.

GENERAL GOVERNMENT CABINET Kentucky Board of Prosthetics, Orthotics, and Pedorthics (As Amended at ARRS, November 7, 2011)

201 KAR 44:010. Fees.

RELATES TO: KRS 319B.030

STATUTORY AUTHORITY: KRS 319B.030(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(f) requires the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 319B. KRS 319B.030(1)(f) requires fees for applications, renewals and reinstatements, late renewals and applications for continuing education course approvals and duplicate licenses or replacements. This administrative regulation establishes those fees.

Section 1. Application Fees. The following fees shall be paid for applications for the following licenses issued by the board:

(1) The fee for an application as a Licensed Prosthetist, a Licensed Orthotist, or dual licensure as a Licensed Orthotist/Prosthetist shall be a \$100 nonrefundable application fee and \$250 for the initial license fee; and[an Prosthetist and Orthotist, and dual licensure of Orthotist and Prosthetist, shall be a \$100, nonrefundable application fee and \$250 for the initial license fee; and]

(2) The fee for application as a Licensed Pedorthist shall be a \$100 nonrefundable [Pedorthist shall a \$100 nonrefundable] application fee and \$200 for the initial license fee; and

(3) The fee for application as a Certified Fitter shall be a \$100 nonrefundable application fee and \$150 for the initial license fee.

(4) The board shall refund the initial license fee to an applicant who does not qualify or has been denied a license.

Section 2. Renewal and Reinstatement. The following fees shall be paid for renewals and reinstatements for licenses issued by the board:

(1) The renewal fee on or before July 1 for **a Licensed Prosthetist, a Licensed Orthotist, or dual licensure as a Licensed Orthotist/Prosthetist shall be \$250**~~[licensure as a Prosthetist and Orthotist, and dual licensure of Orthotist and Prosthetist shall be \$250];~~

(2) The renewal fee on or before July 1 for **a Licensed** ~~[licensure as]~~ Pedorthist shall be \$200 dollars; and

(3) The renewal fee on or before July 1 for **a Licensed Orthotic Fitter shall be \$150** ~~[licensure as a Certified Fitter shall be \$150];~~

(4) The late renewal fee for all licenses during the grace period starting July 1 and ending January 1 shall be \$500, in addition to the initial license fee as set forth in Section 1 of this administrative regulation.

(5) The reinstatement fee after January 1 of a license suspended or revoked or for failure to submit the statement of compliance for the current year shall be \$100 in addition to the late renewal fee as set forth in subsection (4) above and in addition to the initial license fee in Section 1 of this administrative regulation.

Section 3. Duplicate or Replacement License Fee. The fee for a duplicate license shall be ten (10) dollars.

Section 4. Application for Continuing Education Course Approval. The application fee for continuing education course approval shall be fifty (50) dollars per event.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

COMPILER'S NOTE: The paper and electronic versions filed by the Kentucky Board of Prosthetics, Orthotics, and Pedorthics did not match. Changes marked and NOT bolded are made to bring the electronic version into line with the paper version that was filed. The changes made at the ARRS November 7, 2011, meeting are shown in bold.

GENERAL GOVERNMENT CABINET

Kentucky Board of Prosthetics, Orthotics, and Pedorthics (As Amended at ARRS, November 7, 2011)

201 KAR 44:020. Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013.

RELATES TO: KRS 319B.060(2)(a), (3)(a), (5)(a)

STATUTORY AUTHORITY: KRS 319B.060(2)(a), (3)(a), [and] (5)(a), 319B.030(1)(a), [and] (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, ~~[Licensed Orthotist/Prosthetist,]~~ Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation sets forth the procedure by which those applicants shall apply for a license under the provisions of KAR Chapter 201.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist/Prosthetist. An applicant for licensure as an Orthotist, Prosthetist, or Orthotist/Prosthetist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011";

(2) Submit a copy of the current certificate issued by:

(a) American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of:

1. Certified Orthotist (CO);
2. Certified Prosthetist (CP);~~;~~ or

3. Certified Prosthetist/Orthotist (CPO); ~~or~~
(b) Board of Certification/Accreditation, International (BOC) with the title of:

1. Board of Certification-Orthotist (BOCO);~~;~~

2. Board of Certification-Prosthetist (BOCP);~~;~~

3. Board of Certification-Prosthetist/Orthotist (BOCPO); ~~[or~~

~~(c) Similar certifications from other accrediting bodies with equivalent educational requirements and examination standards.]~~

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 2. Licensure of a Pedorthist. An applicant for licensure as a Pedorthist shall meet the following requirements:

(1) Submit a completed ~~["]~~Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form, BPOP-01_06/2011~~["]~~;

(2) Submit a copy of the current certificate issued by:

(a) American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of Certified Pedorthist (CPed); ~~or~~;

1. ~~Certified Orthotist (CO)~~; ~~or~~

2. ~~Certified Prosthetist (CP)~~; ~~or~~

3. ~~Certified Prosthetist/Orthotist (CPO)~~;

(b) Board of Certification/Accreditation, International (BOC) with the title of Board of Certification-Pedorthist (BOCPD);:

1. ~~Board of Certification-Orthotist (BOCO)~~;

2. ~~Board of Certification-Prosthetist (BOCP)~~;

3. ~~Board of Certification-Prosthetist/Orthotist (BOCPO)~~; ~~or~~[(c)

~~Similar certifications from other accrediting bodies with equivalent educational requirements and examination standards.]~~

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an Orthotic Fitter shall meet the following requirements:

(1) Submit a completed ~~["]~~Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011~~["]~~;

(2) Submit a copy of the current certificate issued by:

(a) American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of Certified Orthotic Fitter (COF); ~~or~~;

1. ~~Certified Orthotist (CO)~~

2. ~~Certified Prosthetist (CP)~~; ~~or~~

3. ~~Certified Prosthetist/Orthotist (CPO)~~;

(b) Board of Certification/Accreditation, International (BOC) with the title of Board of Certification-Orthotic Fitter (BOCOF);:

1. ~~Board of Certification-Orthotist (BOCO)~~;

2. ~~Board of Certification-Prosthetist (BOCP)~~;

3. ~~Board of Certification-Prosthetist/Orthotist (BOCPO)~~; ~~or~~[(c)

~~Similar certifications from other accrediting bodies with equivalent educational requirements and examination standards.]~~

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010.

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

(5) Submit a current copy of the certificate issued by the NBCOT stating that the applicant meets the requirements of certification as a COTA; and

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

~~(a)] "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application, Form BPOP-01_06/2011",~~ **is incorporated by reference.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator,
Division of Occupations and Professions, 911 Leawood Drive,
Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(As Amended at ARRS, November 7, 2011)

201 KAR 44:030. Alternative Mechanism Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013 for applicants in practice who are not currently certified.

RELATES TO: KRS 319B.060(4), (6)

STATUTORY AUTHORITY: KRS 319B.060(4), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation sets forth the procedure by which those applicants shall apply for a license who do not hold certification [under the provisions of KAR Chapter 204].

Section 1. Licensure of an Orthotist. An applicant for licensure as an Orthotist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011" incorporated by reference in 201 KAR 44:020;

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as an Orthotist;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010;[-]

(4) Submit detailed work history, including scope of practice, covering the four year period prior to the date of application;[-]

(5) Submit twenty (20) written patient case studies in Orthotics in relation to upper, lower and spinal custom fabricated and fitted devices, and treatment modalities to include;[-]

(a) Written prescription[Prescription] for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write the [such-a] prescription.

(b) Documented L Coding for prescribed orthotic or prosthetic device;[-]

(c) Billing, fee, and insurance arrangements;[-]

(d) Biomechanical rationale[Rationale] and design characteristics of prescribed device; and[-]

(e) Patient Clinical Records, with documentation of subjective, objective, assessment, and plan[Subjective, Objective, Assessment and Plan], including applicable documentation to support treatment modality; and[-]

(6) Three (3) letters of recommendation by:

(a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices; and[-and;]

(b) Who have been or are referral sources for the applicant.

Section 2. Licensure of a Prosthetist. An applicant for licensure as a Prosthetist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-011 06/2011" incorporated by reference in 201 KAR 44:020;

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as a Prosthetist;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010;[-]

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application;[-]

(5) Submit twenty (20) written patient case studies in Prosthetics in relation to upper and lower custom fabricated devices, and treatment modalities to include:

(a) Written prescription[Prescription] for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write the [such-a] prescription;

(b) Documented L Coding for prescribed orthotic or prosthetic device;

(c) Billing, fee, and insurance arrangements;

(d) Biomechanical rationale[Rationale] and design characteristics of prescribed device; and

(e) Patient Clinical Records, with documentation of subjective, objective, assessment, and plan[Subjective, Objective, Assessment and Plan], including applicable documentation to support treatment modality; and[-]

(6) Three (3) letters of recommendation by:

(a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices; and[-and;]

(b) Who have been or are referral sources for the applicant.

Section 3. Licensure of a Pedorthist. An applicant for licensure as a Pedorthist shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011" incorporated by reference in 201 KAR 44:020;

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as a Pedorthist;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010;[-]

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application;[-]

(5) Submit twenty (20) written patient case studies in Pedorthics in relation to foot and ankle custom fabricated and fitted devices, and treatment modalities to include:

(a) Written prescription[Prescription] for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write the [such-a] prescription;

(b) Documented L Coding for prescribed orthotic or prosthetic device;

(c) Billing, fee, and insurance arrangements;

(d) Biomechanical rationale[Rationale] and design characteristics of prescribed device; and;

(e) Patient Clinical Records, with documentation of subjective, objective, assessment, and plan[Subjective, Objective, Assessment and Plan], including applicable documentation to support treatment modality; and[-]

(6) Three (3) letters of recommendation by:

(a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices; and[-and;]

(b) Who have been or are referral sources for the applicant.

Section 4. Licensure of an Orthotic Fitter. An applicant for licensure as an Orthotic Fitter shall meet the following requirements:

(1) Submit a completed "Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01 06/2011" incorporated by reference in 201 KAR 44:020;

(2) Submit independently verifiable proof of having practiced full-time for a minimum of the past four (4) years in a Prosthetic/Orthotic/Pedorthic facility as an Orthotic Fitter;

(3) Submit the appropriate fee for licensure as required by 201 KAR 44:010;[-]

(4) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application;[-]

(5) Submit twenty (20) written patient case studies in Orthotic Fitting in relation to the following non custom orthotic devices set forth in KRS 319B.010(6)(a)-(e) to include:

(a) Written prescription[Prescription] for the orthotic or prosthetic device from a health care practitioner or provider authorized by law to write the [such-a] prescription, and;

(b) Patient Clinical Records, with documentation of subjective, objective, assessment, and plan[Subjective, Objective, Assessment and Plan], including applicable documentation to support treatment modality; and[-]

ment and Plan], including applicable documentation to support treatment modality; and[-]

(6) Three (3) letters of recommendation by:

(a) Licensed healthcare professionals authorized by law to prescribe, measure or fit devices; and[-and;]

(b) Who have been or are referral sources for the applicant. [Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~Orthotist/Prosthetist/Pedorthist/Orthotic Fitter Application Form BPOP-01-06/2011.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(As Amended at ARRS, November 7, 2011)

201 KAR 44:040. Professional Conduct and Code of Ethics

RELATES TO: KRS 319B.030, 319B.140

STATUTORY AUTHORITY: KRS 319B.030 (1)(h) [(4)(b)], 319B.140 (1)(b), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(h) requires the board to establish standards of practice for person licensed pursuant to KRS Chapter 319B. This administrative regulation defines unprofessional conduct and sets forth a code of ethics for persons licensed under KRS Chapter 319B.

Section 1. Failure to comply with any of the provisions in this section shall constitute unprofessional conduct in the practice of Licensed Prosthetist, Licensed Orthotist, Licensed Prosthetist/Orthotist, Licensed Pedorthist, or Licensed Orthotic Fitter.

Section 2. Responsibilities to Other Licensed Healthcare Practitioner or Provider. The licensee shall:

(1) Receive and document a prescription or other valid referral, authorization, hospital or skilled nursing facility order from a licensed healthcare practitioner or provider:

(a) Authorized by law to provide those prescriptions; and

(b) Which is consistent with the standards of the healthcare practitioner or provider;

(2) Consult and coordinate with the licensed healthcare practitioner or provider to determine and to document the medical appropriateness of the orthotic, prosthetic, or pedorthic device;

(3) Notify the licensed healthcare practitioner or provider of changes in the patient's condition that may affect the patient's orthotic, prosthetic or pedorthic treatment plan; and

(4) Notify and obtain authorization from the licensed healthcare practitioner or provider prior to repair or adjustment of an orthotic, prosthetic, or pedorthic device if:

(a) The repairs or adjustments do not conform to the original prescription; or

(b) The repairs or adjustments substantially alter the design or function of the originally prescribed device. [(1) The licensee shall:

(a) Receive and document a prescription or other valid referral, authorization, hospital or skilled nursing facility order from a licensed healthcare practitioner or provider who is:

1. authorized by law to provide such prescriptions and;

2. which is consistent with the standards of the healthcare

practitioner or provider;

(b) Consult and coordinate with the licensed healthcare practitioner or provider to determine and to document the medical appropriateness of the orthotic, prosthetic, or pedorthic device.

(c) Notify the licensed healthcare practitioner or provider of changes in the patient's condition that may affect the patient's orthotic, prosthetic or pedorthic treatment plan.

(d) Notify and obtain authorization from the licensed healthcare practitioner or provider prior to repair or adjustment of an orthotic, prosthetic, or pedorthic device when:

1. Such repairs or adjustments do not conform to the original prescription; or

2. Such repairs or adjustments substantially alter the design or function of the originally prescribed device.]

Section 3. Responsibilities to the Patient. (1) The licensee shall:

(a) Monitor and observe the patient's physical condition regarding the orthotic, prosthetic, or pedorthic care and the prescribed device;

(b) Ensure the orthotic, prosthetic, or pedorthic device is functioning appropriately to implement the patient's treatment plan;

(c) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other private information relating to the patient;

(d) Not communicate any confidential information to any person or entity who is not providing direct medical care to the patient;

1. Without the prior written consent of the patient or patient's legal guardian; or

2. Unless required by a court order or other applicable legal requirements;

(e) Comply with KRS 422.317;

(f) Complete all patient care documentation within a reasonable time from date of service;

(g) Submit all insurance requirements necessary for billing within a reasonable time from the date of service;

(h) Accept a patient regardless of race, gender, color, religion or national origin or on any basis that would constitute illegal discrimination under state or federal law;

(i) Refer a patient to another licensed healthcare practitioner or provider if the nature and extent of a problem of the patient exceeds the scope of competence of the licensee;

(j) Inform the patient of the patient's right to seek orthotic, prosthetic, or pedorthic services from any qualified healthcare practitioner or provider; and

(k) Consult the patient's parent, legal guardian, or other third party who has decision-making authority for the patient when the patient's personal judgment to make decisions concerning the device or services being offered may be impaired.

(2) The licensee shall not:

(a) Engage in false, misleading, or deceptive acts related to the cost of the services provided or recommended;

(b) Utilize or continue orthotic, prosthetic or pedorthic services beyond the point of reasonable benefit or by providing services more frequently than medically necessary unless consented to in writing by the patient;

(c) Submit false, misleading, or deceptive information regarding payment or reimbursement;

(d) Engage in the excessive use of alcoholic beverages or the abusive use of controlled substances;

(e) Verbally or physically abuse a client;

(f) Delegate to an unlicensed employee or person a service which requires the skill, knowledge, or judgment of a licensee under KRS Chapter 319B;

(g) Aid or abet an unlicensed person to practice when a license is required; or

(h) Exercise undue influence in a manner as to exploit the patient for financial or other personal advantage to the licensee or a third party. [(1) The licensee shall:

(a) Monitor and observe the patient's physical condition regarding the orthotic, prosthetic, or pedorthic care and the prescribed

device;

(b) Ensure the orthotic, prosthetic, or pedorthic device is functioning appropriately to implement the patient's treatment plan.

(c) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other private information relating to the patient.

(d) Not communicate any confidential information to any person or entity who is not providing direct medical care to the patient:

1. Without the prior written consent of the patient or patient's legal guardian, or;

2. In accord with a court order or other applicable legal requirements.

(e) Comply with KRS 422.317.

(f) Complete all patient care documentation within a reasonable time from date of service.

(g) Submit all insurance requirements necessary for billing within a reasonable time from date of service.

(h) Accept a patient regardless of race, gender, color, religion or national origin or on any basis that would constitute illegal discrimination under state or federal law.

(i) Refer a patient to another licensed healthcare practitioner or provider when the nature and extent of a problem of the patient exceeds the scope of competence of the licensee.

(j) Inform the patient of the patient's right to seek orthotic, prosthetic, or pedorthic services from any qualified healthcare practitioner or provider.

(k) Consult the patient's parent, legal guardian, or other third party who has decision-making authority for the patient when the patient's personal judgment to make decisions concerning the device or services being offered may be impaired.

(2) The licensee shall not:

(a) Engage in false, misleading, or deceptive acts related to the cost of the services provided or recommended.

(b) Utilize or continue orthotic, prosthetic or pedorthic services beyond the point of reasonable benefit or by providing services more frequently than medically necessary unless consented to in writing by the patient.

(c) Submit false, misleading, or deceptive information regarding payment or reimbursement.

(d) Engage in the excessive use of alcoholic beverages or the abusive use of controlled substances.

(e) Verbally or physically abuse a client.

(f) Delegate to an unlicensed employee or person a service which requires the skill, knowledge, or judgment of a licensee under KRS Chapter 319B.

(g) Aid or abet an unlicensed person to practice when a license is required.

(h) Exercise undue influence in such a manner as to exploit the patient for financial or other personal advantage to the licensee or a third party.]

Section 4. Patient Documentation. **A licensee shall complete all documentation as follows:**

(1) A patient assessment to include:

(a) The documentation required by Section 2(1)(a) of this administrative regulation;

(b) Physical evaluation; and

(c) Patient's written and informed consent;

(2) A treatment plan to include:

(a) Documentation of subjective, objective, assessment, and plan of care;

(b) Applicable documentation to support treatment modality; and

(c) Follow-up and evaluation of clinical outcomes; and

(3) Practice management to include:

(a) Documented L coding for prescribed orthotic or prosthetic device; and

(b) Billing, fee, and insurance arrangements. [(1) A licensee shall complete and document:

(a) A patient assessment to include:

1. The documentation required by Section 2(1)(a) of this administrative regulation;

2. Physical evaluation and;

3. Patient's written and informed consent

(b) Treatment plan to include:

1. Documentation of Subjective, Objective, Assessment, and Plan of Care, and;

2. Applicable documentation to support treatment modality, and;

3. Follow-up and evaluation of clinical outcomes.

(c) Practice management to include:

1. documented L coding for prescribed orthotic or prosthetic device, and;

2. billing, fee, and insurance arrangements, and;]

Section 5. Responsibilities to Research Subjects. **The licensee, if engaged in a research project or study, shall:**

(1) Ensure that all patients affiliated with those projects or studies consent in writing to the use of the results of the study;

(2) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other information relating to the patient;

(3) Maintain patient dignity and well-being;

(4) Ensure the research is conducted in accordance with all federal and state laws;

(5) Take reasonable steps to prevent false, misleading, or deceptive acts and practices relating to the research project or study; and

(6) Immediately report, in writing, unethical or illegal conduct to the board or appropriate law enforcement authority, if the licensee has reason to believe that any unethical or illegal conduct has occurred or is likely to occur. [(1) The licensee, when engaged in a research project or study, shall:

(a) Ensure that all patients affiliated with such projects or studies consent in writing to the use of the results of the study.

(b) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other information relating to the patient.

(c) Maintain patient dignity and well-being.

(d) Ensure the research is conducted in accord with all federal and state law.

(e) Take reasonable steps to prevent false, misleading, or deceptive acts and practices relating to the research project or study.

(f) Report, immediately in writing, unethical or illegal conduct to the board or appropriate law enforcement authority, when the licensee has reason to believe that such unethical or illegal conduct has occurred or is likely to occur.]

Section 6. Responsibilities to the Kentucky Board of Prosthetics, Orthotics and Pedorthics. **(1) The licensee shall:**

(a) Comply with the reporting requirements of KRS 319B.050(1) and (4);

(b) Notify the board, in writing, within thirty (30) days after the date upon which:

1. A payment is made by the licensee, or on the licensee's behalf, to settle a claim of professional negligence;

2. Conviction of a felony in any court;

3. A disciplinary action against the licensee by any other governmental licensing authority of this state or any other state; or

4. Suspension or cessation of participation of any federal or state reimbursement program;

(c) File an initiating complaint with the board if the licensee has actual knowledge, which may be inferred from the circumstances, that another licensee has committed a violation of KRS Chapter 319B or the administrative regulations;

(d) Use the correct designation following the licensee's name on any patient record or advertising as follows:

1. If the licensee is an Orthotist, "LO";

2. If the licensee is a Prosthetist, "LP";

3. If the licensee is a Prosthetist/Orthotist, "LPO";

4. If the licensee is a Pedorthist, "LPed";

5. If the licensee is an Orthotic Fitter, "LOF"; or

6. Appropriate designations for advanced academic degrees or bona fide certifications, if any, following the above designations.

(2) The licensee shall not:

(a) Fail to cooperate with the board by:

1. Not furnishing any papers or documents requested by the board;

2. Not furnishing in writing a complete explanation covering the matter contained in a complaint filed with the board;

3. Not appearing before the board at a time and place designated; or

4. Not properly responding to subpoenas issued by the board;

(b) Pay any financial interest, compensation, or other value to be received by a referral source for:

1. Services provided by the licensee;

2. Prosthetic, orthotic, pedorthic devices; or

3. Other services the licensee may recommend for the patient;

(c) Have, or attempt to have, sexual relations with:

1. An active patient of record, unless a consensual sexual relationship existed between them before the licensee-patient relationship commenced;

2. A patient of record for a period of ninety (90) days from the last date of service rendered to the patient or;

3. A parent, legal guardian, or other third party, who has decision-making authority for:

a. An active patient of record; or

b. For a period of ninety (90) days from the last date of service rendered to the patient whichever is longer;

(d) Use any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is false, misleading, deceptive, or untruthful; or

(e) Commit or attempt to commit any unfair, false, misleading, or deceptive act or practice. [(1) The licensee shall:

(a) Comply with the reporting requirements of KRS 319B.050(1) and (4);

(b) Notify the board, in writing, within thirty (30) days after the date upon which:

1. A payment is made by the licensee, or on the licensee's behalf, to settle a claim of professional negligence;

2. Conviction of a felony in any court;

3. A disciplinary action against the licensee by any other governmental licensing authority of this state or any other state;

4. Suspension or cessation of participation of any federal or state reimbursement program.

(c) File an initiating complaint with the board when the licensee has actual knowledge, which may be inferred from the circumstances that another licensee has committed a violation of KRS Chapter 319B or the administrative regulations there under.

(d) Use the correct designation following the licensee's name on any patient record or advertising as follows:

1. If the licensee is an Orthotist: "LO"

2. If the licensee is a Prosthetist: "LP"

3. If the licensee is a Prosthetist/Orthotist: "LPQ"

4. If the licensee is a Pedorthist: "LPed"

5. If the licensee is an Orthotic Fitter: "LOF" and:

6. Appropriate designations for advanced academic degrees or bona fide certifications, if any, following the above designations.

(2) The licensee shall not:

(a) Fail to cooperate with the board by:

1. Not furnishing any papers or documents requested by the board;

2. Not furnishing in writing a complete explanation covering the matter contained in a complaint filed with the board;

3. Not appearing before the board at a time and place designated or;

4. Not properly responding to subpoenas issued by the board.

(b) Pay any financial interest, compensation or other value to be received by a referral source:

1. For services provided by the licensee;

2. For prosthetic, orthotic, pedorthic devices, or;

3. For other services the licensee may recommend for the patient.

(c) Have, or attempt to have, sexual relations with:

1. An active patient of record, unless a consensual sexual

relationship existed between them before the licensee-patient relationship commenced, or;

2. A patient of record for a period of ninety (90) days from the last date of service rendered to the patient, or;

3. A parent, legal guardian, or other third party, who has decision-making authority for:

a. An active patient of record, or;

b. For a period of ninety (90) days from the last date of service rendered to the patient whichever is longer.

(d) Use any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is false, misleading, deceptive, or untruthful.

(e) Commit or attempt to commit any unfair, false, misleading, or deceptive act or practice.]

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(As Amended at ARRS, November 7, 2011)**

201 KAR 44:050. Per diem of board members.

RELATES TO: KRS 319B.020(6)

STATUTORY AUTHORITY: KRS 319B.020(6), 319B.030(2) and 12.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.020(6) authorizes board members to receive a per diem reimbursement of reasonable expenses for each day actually engaged in the duties of the office. KRS 12.070(5) authorizes the board members to receive reimbursement for their actual and necessary expenses. This administrative regulation sets the per diem amount board members receive to be [when actually engaged in the duties of the office and provides for] reimbursement for their actual and necessary expenses.

Section 1. Each member of the board shall receive reimbursement[:

(a) A per diem of \$100 when actually engaged in the duties of the office, and;

(b) Reimbursement] for their actual and necessary expenses.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: July 12, 2011

FILED WITH LRC: July 14, 2011 at 8 a.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

**ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
Kentucky State Nature Preserves Commission
(As Amended at ARRS, November 7, 2011)**

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

RELATES TO: KRS 146.410, 146.440

STATUTORY AUTHORITY: KRS 146.465, 146.475, 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485(2) authorizes the commission to promulgate administrative regulations for the management, use, and protection of nature preserves. KRS 146.465 authorizes the commission to acquire natural areas for the purpose of dedicating the areas as nature

preserves. KRS 146.475 requires that a nature preserve shall be subject to administrative regulations promulgated by the commission. [KRS 146.485 requires the commission to establish rules for the management, use, and protection of nature preserves.] This administrative regulation establishes the requirements for the [sets forth rules to be applied to the] management and use of all nature preserves[,] and to fulfill the purposes of KRS 146.440.

Section 1. Applicability. This administrative regulation [These rules] shall apply to a nature preserve unless a specific exception is [all nature preserves unless exceptions are] set forth in the articles of dedication. The reasons for any exception [exceptions] shall be set forth in the records of the commission.

Section 2. Boundary Markers. (1) Nature preserve [preserves] boundaries shall be made evident by posting boundary markers in a conspicuous manner[, or as approved by the commission].

(2) If a boundary fence or barrier is installed [Boundary fences and barriers may be installed as approved by the commission; such shall not be], it shall not be in a form that will create a detrimental effect on the movement of wildlife or other natural objects.

Section 3. Encroachments [Intrusions]. There shall not be [no] encroachments [intrusions] of structures, easements, rights-of-way, or land uses that [which] do not conform to this administrative regulation [with these rules] and with the purposes and definition of a nature preserve as specified in KRS 146.410 to 146.530 [the Act], except as allowed by the articles of dedication.

Section 4. Emergency Situations. (1) An emergency situation [Emergency situations] shall be reported immediately to the director of the commission [by the custodian of the nature preserve].

(2) An emergency situation that requires [Emergency situations that require] immediate action to prevent injury to persons or damage to property[, as determined by the director or the commission,] shall be handled in a manner that minimizes [such a manner as to cause minimal] damage to natural conditions.

Section 5. Internal Access Lanes. (1) An internal [A] vehicular access lane [Vehicular access lanes] shall be installed and maintained within a nature preserve only where essential for patrol, fire control, management, [or other management] or research activities and shall be in accordance with the preserve management plan [plans approved by the commission].

(2) An internal [A] vehicular access lane [Such lanes] shall:

(a) Be limited to [be closed to all except] service vehicles or, in an emergency situation, rescue vehicles; and [except in emergency situations]

(b) Provide [They shall provide] a single track not to exceed ten (10) feet in width[, and clearing shall not extend more than seven (7) feet on each side of the center of the lane. Service vehicles only shall be used on such designated access lanes except in emergency situations.].

Section 6. Fire Control. (1) If a [When] boundary firebreak is [firebreaks are] needed, it [they] shall be constructed in a buffer area outside the nature preserve if possible.

(a) A firebreak [Firebreaks] within a nature preserve shall be kept to a minimum and shall be constructed only in accordance with the preserve fire management plan [plans approved by the commission].

(b) A temporary firebreak [Temporary firebreaks,] made by mowing, raking, blowing, wetting, or black lining [,] may be used in conjunction with a managed burn.

(2)(a) A wildfire [All wildfires] shall be brought under control as quickly as possible if there is imminent danger to lives or adjacent property.

(b) Fire lines shall be constructed with hand tools rather than heavy equipment, to minimize damage [danger] to the preserve.

(c) If there is no danger to lives or adjacent property and the fire can be contained at the preserve boundary, the commission may assess the benefit of allowing a wildfire to burn and shall inform the entity having fire suppression responsibility of its decision to suppress a wildfire or to allow it to burn.

(d) There shall not be any [be] [After a fire within a nature preserve, there shall be] [no] cleanup, fire hazard reduction, or replanting after a fire within a nature preserve, except with the written approval of the commission. Approval shall be based upon health and safety considerations[, or the need for habitat restoration].

(3) If undertaken, prescribed [Prescribed] burning shall [may] be [undertaken] conducted in accordance with a prescribed fire plan prepared for each burn unit and in accordance with the preserve management plan [as approved by the commission. A written plan shall be prepared for each prescribed burn. Approval may be given if the prescribed burning plan is in compliance with this section].

(4) During a prescribed burn:

(a) Fire shall be kept away from fences and other structures that may be damaged;

(b) [.] Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan;

(c) [.] Firefighting chemicals that are known to cause damage to or alter a natural condition [alteration of natural conditions] shall not be used; and

(d) The use of a vehicle or equipment [Use of equipment and vehicles] shall;

1. [(4)] Be specified in the prescribed burn plan; and

2. [(2)] Not [No equipment or vehicles that would] cause permanent damage or alteration to the natural features of the nature preserve [shall be used].

Section 7. Trails. (1) A trail system shall conform to the objectives of the nature preserve. A trail [Trails] shall:

(a) Be [be] designed [so as] to affect only part of the nature preserve and to have minimal impact on natural features; and

(b) Not [Trails shall be designed to] have a [no] significant impact on [species of] animals or plants monitored by the commission or on archaeological resources located within the preserve.

(2) Location and form of a trail [any trails] other than a natural wildlife path [paths] shall be approved or denied by the commission, in accordance with the preserve management plan.

(3) A trail [Trails] shall be kept to a single file width sufficient to allow one (1) person to pass another but not wide enough to allow two or more people to walk abreast of one another and shall be adequate to provide for permitted use of a nature preserve and to prevent erosion, trampling of vegetation, and other deterioration[, but otherwise shall be kept to a minimum]. "A wider trail may be constructed when the surrounding vegetation type, such as grasslands would require excessive maintenance to keep the trail open, and shall be specified in the preserve management plan."

(4) Trail construction.

(a) Use of paving materials, footbridges, or [and] elevated walks is permissible if [when] provided for in the trail plan section of the preserve management plan [approved by the commission], but shall be kept to a minimum in order to limit damage to the preserve.

(b) Synthetic materials, painted or chemically treated wood, or stone or earth materials from outside the nature preserve shall not [may] be used in trail construction unless specified in the preserve management plan [only as specified by the commission].

(5) [(3) No species of] Animals or plants monitored by the commission shall not be removed, damaged, or altered in trail construction or maintenance.

Section 8. Other Structures and Improvements. (1) Necessary signs, information kiosks [booths], trash receptacles, and minor structures required to house research instruments or hand tools shall be [are] permitted within a nature preserve [preserves] if specifically required in the preserve management plan [approved by the commission] or permitted by [by permission of] the commission for research activities.

(2) Any other structure [All other structures and service facilities] shall be located in a service area [areas].

(3) Any sign or structure [Signs and structures] shall be approved or denied by the commission, in accordance with the preserve management plan.

Section 9. Service Areas. Service areas may be established within a nature preserve [preserves] to provide access and parking, management facilities, and visitor facilities. Provision for a neces-

sary service ~~area~~areas may be included in the articles of dedication or ~~after a finding by the commission that the designation is warranted and in accordance with the articles of dedication~~ [as approved on a case specific basis by the commission].

Section 10. Scenic and Landscape Management. (1) ~~Measures~~ [No measures] shall ~~not~~ be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of a nature preserve, except as established in this section and sections 2, 5, and 7 through 9 of this administrative regulation. ~~[There shall be no]~~ Cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, opening of scenic vistas, or planting ~~shall not be performed~~, except after a finding by the commission that the action does not irreparably harm the preserve and is in accordance with the preserve management plan ~~[as approved by the commission]~~.

(2) Installation of guard rails, fences, steps, and other devices necessary for visitor safety ~~shall~~may conform to the preserve management plan ~~[be approved by the commission]~~. Dead trees or branches that constitute a safety hazard to persons on trails or in other authorized use areas may be felled or cleared.

(3) Except as provided in the articles of dedication or as approved by the commission, there shall ~~not~~ be any ~~[no]~~ removal, introduction or consumptive use of any material, product, or object from a nature preserve ~~[and there shall be no introduction of any material, product, or object to a nature preserve]~~, except as established in this administrative regulation. The following activities shall ~~be~~ [are] ~~prohibited~~ [include, but are not limited to:]:

(a) Grazing by domestic animals;

(b) Farming;

(c) Gathering of firewood;

(d) Gathering of ~~[or other]~~ plant or mushroom products;

(e) Mining, quarrying or mineral extraction, fossil or rock collection;

(f) Dumping, burying or spreading of garbage, trash or other materials;

(g) Logging; and

(h) Any other human activity that results in damage to or loss of natural features of the preserve.

(4) An artifact shall only ~~[As approved by the commission, artifacts may]~~ be removed or demolished as follows:

(a) An old interior fence ~~[Old interior fences]~~ may be removed. Prior to removal, its location shall be mapped, ~~[giving consideration to]~~ leaving posts to mark boundaries between former land uses; and

(b) Rubbish may be removed; and

(5) ~~[(e)]~~ Structures ~~[having]~~ lacking ~~[no]~~ utilitarian, historical, scientific, or habitat value may be demolished or removed.

Section 11. Water Level Control. Natural water levels shall not be altered. Water levels ~~that~~which have been altered by ~~humans~~man may be changed if identified as being essential for the maintenance or ~~[and]~~ restoration of natural conditions.

Section 12. Erosion Control. Erosion and soil deposition due to past or present disturbance by ~~humans~~man or natural conditions within or outside of a nature preserve may be controlled as needed for the maintenance or restoration of natural conditions ~~[approved by the commission]~~.

Section 13. Management of Animals and Plants. (1) Control of plant succession.

(a) Control of plant succession by deliberate manipulation may be undertaken if preservation or restoration of a particular vegetation type or preservation of ~~[a species of]~~ animals or plants monitored by the commission is designated an objective of the nature preserve by the commission.

(b) If undertaken, plant succession control measures ~~shall~~may be undertaken ~~[in such a manner]~~ as outlined in the preserve management plan to meet objectives referenced in Section 13(a) of this administrative regulation ~~[as approved by the commission]~~.

(c) Vegetation may be managed. If managed, ~~[within]~~ the following limitations shall apply:

1. Plant species not native to the site or vicinity may be eliminated by cutting, girdling, grubbing, cut stump, or ~~[or]~~ basal or ~~[spot]~~ foliar application of specified herbicide;

2. The time of burning during the year, the frequency of burning, and the fractional amount of the area that may be burned each year shall be specified; and

3. Invading native woody species may be eliminated or controlled by cutting, girdling, grubbing, cut stump, or ~~[or]~~ basal or foliar application of specified herbicide.

(d) The use of herbicides ~~shall~~may be specified in the management plan for each preserve ~~[by the commission]~~.

(2) Control of noxious species.

(a) ~~[Species of]~~ Plants or ~~[and]~~ animals ~~that~~which are noxious in fact shall be controlled only if they are ~~[determined by the commission to be]~~ documented as jeopardizing populations of plants and animals or the natural integrity of the nature preserve.

(b) Except for removal from a trail, access lane, or firebreak as authorized by this administrative regulation ~~[trails, access lanes, and firebreaks as approved by the commission]~~, there shall ~~not~~ be any ~~[no]~~ control of a native plant that is ~~[native plants which are]~~ not noxious but may otherwise appear undesirable.

(c) There shall ~~not~~ be any ~~[no]~~ control of native predators, rodents, insects, snakes, or other animals ~~[except as approved by the commission]~~, even though they may appear harmful or undesirable, unless they are documented as jeopardizing populations of native plants or animals, or the natural integrity of the nature preserve.

(d) There shall ~~not~~ be any ~~[no]~~ use of a pesticide ~~[pesticides]~~ except as authorized in the preserve management plan.

(3) Control of exotic species.

(a) Control of exotic plants or ~~[and]~~ animals may be undertaken. If control of exotic plants is undertaken, it shall be done in accordance with Section 13(1)(c) of this administrative regulation ~~[in a manner approved by the commission. There may be no attempt to eradicate exotic species that have become a stable part of the biotic community unless this can be accomplished without disturbance of natural conditions]~~.

(b) If control of exotic animals is undertaken it shall be done in accordance with Section 13(2) of this administrative regulation ~~[Control of exotic plants may be undertaken by control of plant succession as provided in this administrative regulation or by management practices allowed in this administrative regulation]~~.

(4) Any measure ~~[measures]~~ for population control of any species shall be established ~~[to be applied must be provided for]~~ in the preserve management plan ~~[a written plan approved by the commission. Except as provided in the articles of dedication or approved by the commission, control measures shall be undertaken only by the commission staff or others approved by the commission]~~.

(5) Management of ~~[species of]~~ plants or ~~[and]~~ animals monitored by the commission and species of management concern.

(a) Habitat manipulations and protective measures in favor of particular species shall be undertaken only as approved by the commission. Approval shall be based upon a finding by the commission that describes the proposed activities and addresses species life history, habitat requirements of the species, characteristics and objectives of the preserve and other relevant information.

(b) Control of plant succession in favor of particular species shall be as provided in this administrative regulation.

(6) Introduction of plants and animals. ~~[No]~~ Plants, ~~[or]~~ animals, or their reproductive bodies shall ~~not~~ be brought into a nature preserve or moved from one (1) place to another within a preserve except with approval of the commission. Approval shall be based upon scientific evidence documenting the species' historical occurrence on the preserve. Restoration shall be performed with caution and based on a finding that the ~~[such]~~ actions shall not adversely affect natural conditions on the preserve.

Section 14. Use Tolerance. (1) Human use of a nature preserve shall be allowed only to ~~the~~such extent and in ~~a~~such manner that shall ~~[as will]~~ not impair natural conditions.

(2) The articles of dedication may specify the controls and restrictions to be placed on access and use.

(3) The commission as owner, or the landowner and the com-

mission upon agreement, may further restrict access and use as necessary to protect the nature preserve.

Section 15. Character of Visitor Activity. (1) Visitor activity shall be regulated to prevent disturbance of a nature preserve beyond what it can tolerate without permanent deterioration. A visitor without a permit [Visitors without permits] for research or educational activities shall be restricted to trails and areas open to off-trail use and may be otherwise restricted in movement. A person [Persons] wishing to traverse a nature preserve elsewhere than on a trail [trails] or other area [areas] open to visitation shall obtain permission from the commission.

(2) Public use shall be in accordance with the articles of dedication of the preserve[, and such rules as may be approved by the commission for a nature preserve].

(3) Hunting, fishing, and trapping shall not be allowed unless provided for in the articles of dedication for the nature preserve and shall be subject to 400 KAR Chapter 2 [restrictions approved by the commission. Additional rules, administrative regulations, or restrictions may be adopted by the commission on a preserve basis to ensure that the preserve is protected adequately from an inappropriate overbalance of game species or impending disease problems of game or nongame species]. The commission may approve hunting, fishing, trapping or other control methods if necessary to ensure that the preserve is protected from a documented imbalance of species or impending animal disease.

(4) A visitor [Visitors] shall not bring an animal [pets] into a nature preserve, except for a service animal [allowed pursuant to permission to hunt in a nature preserve].

(5) A visitor carrying a deadly weapon on a nature preserve shall not discharge the weapon unless it is necessary for either self-defense or hunting if the visitor has previously obtained permission from the commission to hunt on the nature preserve or hunting is provided for in the articles of dedication [Deadly weapons shall not be carried by visitors to a nature preserve except as allowed pursuant to permission to hunt in a nature preserve].

(6) A preserve that is open to visitors shall be open sunrise to sunset.

(7) Trails shall be open to foot traffic only. Travel on horse, bicycle, or motorized vehicle shall be prohibited at all times.

(8) Rock climbing and rappelling shall be prohibited at all times.

(9)[9.] Possessing or using non-prescription drugs or alcohol shall be prohibited at all times.

(10)[10.] Camping, picnicking, building fires, using audio equipment (except if part of research approved by the commission) shall be prohibited at all times.

(11)[11.] Collecting plants, fungi, animals, minerals, rocks, wood or artifacts shall be prohibited at all times except for approved scientific studies in accordance with Section 19 of this administrative regulation.

Section 16. Access Control. (1) Ingress and egress shall be allowed only at [such] locations and under [such] conditions as may be specified by the commission in the preserve management plan.

(2) The owner, custodian, and commission have the authority to further limit access as may be necessary for protection and proper management of the nature preserve.

Section 17. Orientation and Guidance of Visitors. Orientation and guidance of visitors shall be in accordance with the articles of dedication, and as approved by the commission. Interpretive signs, structures or labels shall be of uniform appearance [approved by the commission].

Section 18. Permission for Research or Educational Activities.

(1) A person wishing to engage in research or educational activities on a nature preserve [not otherwise permitted by these rules or by the articles of dedication for the nature preserve] shall secure prior permission of the commission. If the activities are to be carried on by a group, permission may be issued to the group leader who shall be responsible for the actions of the group. Permission or denial shall be based upon information provided in the application for permission, the purpose stated for the research,

and an assessment of any damage that may result from the activity.

(2) Permission shall be [is] required for educational use of a preserve only if activities [are to] include collecting or activities other than walking and observation [; or if the preserve is not open to the public].

(3)(a) The application for permission shall be on a form prescribed by the commission and [it] shall include the:

1. Name of the applicant;
2. Mailing address of the applicant;
3. Occupation of the applicant;
4. Professional qualifications of the applicant;
5. General field of interest of the applicant; and
6. Description of the applicant's proposed activities, including

the:

- a. Objectives, methods and procedures to be followed; [;]
- b. Records to be kept;
- c. Location and duration of the project areas to be visited;
- d. Frequency and length of visits; and
- e. Detailed description of disturbances to be made to the preserve [name, address, position, professional qualifications, and general field of interest of the applicant and a description of the proposed activities including the objective, methods and procedures to be followed, records to be kept, duration of the project areas to be visited, frequency and length of visits, and detailed description of disturbances to be made. If collecting is to be done it shall be in accordance with this administrative regulation].

(b) Information shall be provided on the:

1. Species or objects to be taken;
2. Number of specimens;
3. Method of taking; and
4. Disposition of specimens [species or objects to be taken, number of specimens, method of taking, and disposition of specimens].

(c) The commission shall provide permission application forms to persons requesting them.

(4)(a) The permission may contain specific provisions and restrictions.

(b) Permission may be modified, suspended, or revoked by the commission for violations of the conditions of permission, this section, or based upon a determination of the commission that the activity jeopardizes the nature preserve.

(c) Each holder of permission shall submit to the commission an annual report or progress report [in such form as may be prescribed by the commission].

(d) Permission for an activity of no more than the calendar year expires on December 31 of that year. Permission for an activity of longer than one (1) year may be extended annually upon submission of an annual report and request for an extension.

Section 19. Collecting on Nature Preserves. (1) A person [Persons] wishing to collect a scientific specimen [specimens] for deposition in a permanent institutional collection available to the public or for purposes of an approved research project shall [may] do so pursuant to terms of permission as specified in this administrative regulation.

(2) Permission may restrict the collecting of certain species or specimens. [There shall be no collecting of] Material for classroom laboratory observation or [and] study shall not be collected [or mass collecting by class groups]. Exceptions may be provided in the articles of dedication of the nature preserve, or as set forth in the preserve management plan [by the commission].

Section 20. Record. (1) A record shall be kept for each nature preserve.

(2) One (1) copy of the record required by subsection (1) of this section shall be held by the commission at its Frankfort office.

(3) The record shall include annual reports of the custodian and all other pertinent documentary material, studies, reports, and descriptions of significant events.

(4) Responsibility for assembling the record shall be with the commission director, in conjunction with the custodian of the nature preserve.

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Section 21. Management Plan. Each nature preserve shall be managed in strict accordance with the most recent approved management plan that sets forth the allowable activities to take place on the preserve as related to:

- (1) Natural community and rare species protection;
- (2) Resource restoration and enhancement;
- (3) Archeological and historical resource protection;
- (4) Staffing;
- (5) Security;
- (6) Safety;
- (7) Public access and interpretation;
- (8) Maintenance of the preserve;
- (9) Coordination of management activities with adjacent land-owners and other federal and state resource protection agencies; and
- (10) Research and education.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Collecting/Access Permit Application for Kentucky State Nature Preserves," October 2011; and
- (b) "Research Permit Application for Kentucky State Nature Preserves," October 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Nature Preserves Commission, 801 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: August 15, 2011
FILED WITH LRC: August 15, 2011 at 10 a.m.
Contact Person: Donald S. Dott, Jr.

**JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(As Amended at ARRS, November 7, 2011)**

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.

(3) [(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 recidivism if successfully completed by an offender.]

(4) [(6)] "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; or

(b) Answer the detainer.

(5) [(7)] "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

(6) [(8)] [(7)] "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence. [(9)] [(8)] ["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.]

(7) [(10)] [(9)] "Parole for violent offender" is defined in KRS 439.3401. [(11)] [(10)] ["Parole revocation" means the formal procedure by which the board may terminate or revoke an offender's release on parole.]

(8) [(12)] [(11)] "Physical injury" is defined in KRS 500.080(13). [(13)] [(12)] ["Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe an offender has violated the conditions of his parole.

(14) [(13)] ["Reconsideration" means a decision to review a previous board action.

(15) [(14)] ["Restitution" is defined in KRS 532.350(1)(a).]

(9) [(16)] [(15)] "Serious physical injury" is defined in KRS 500.080(15).

(10) [(17)] [(16)] "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(11) [(18)] [(17)] "SOTP" means Sex Offender Treatment Program. [(19)] [(18)] ["Youthful offender" is defined in KRS 600.020(64).]

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 postincarceration supervision [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. 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 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

(c) For a felony offense committed after December 3, 1980:

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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

(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;

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 Chapter 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;

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 received] or [twenty] 20 years, whichever is less
Sentences of life	20 years

(f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) 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) Subsequent parole review. Except as provided in KRS 439.340(14):

~~(a) [(a) [by paragraphs (a) and (b) of this subsection,] After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and (a) The maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence.~~

~~(b) 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 violent offender as defined in KRS 439.3401;~~

~~2. 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. 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. A human life was taken;~~

~~b. A serious physical injury occurred; or~~

~~c. A sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320 was committed.]~~

~~(b) [(c) Except as provided in KRS 439.340(14),] The [The] board, at the initial or a subsequent review, may order a serve-out on a sentence. [If the sentence is a life sentence, the full board shall vote.]~~

(3) Parole review with new felony conviction.

(a) 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. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set [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. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon [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. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or con-

secutive 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) Except as provided by paragraph (b) of this subsection, 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 set [calculated] by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. 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. 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. 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) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set [calculated] under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)1. Except as provided by paragraph (b) of this subsection, 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 set [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 set based on the new sentence [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) 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 set [calculated] from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) 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. 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) 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) 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.

VERMAN WINBURN, Chairman

APPROVED BY AGENCY: September 15, 2011

FILED WITH LRC: September 15, 2011 at noon

CONTACT PERSON: John C. Cummings, Counsel for the Kentucky Parole Board, Justice and Public Safety Cabinet, Office of Legal Services, 275 E. Main Street, Frankfort, Kentucky 40601, phone (502) 564-3620, fax (502) 564-8995.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office for the Blind
(As Amended at ARRS, November 7, 2011)

782 KAR 1:020. Definitions for 782 KAR Chapter 1.

RELATES TO: KRS 163.470(10)

STATUTORY AUTHORITY: KRS 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the Office for the Blind to promulgate administrative regulations[office] to establish and implement policies and procedures for carrying out the program of services for the blind. This administrative regulation establishes definitions for the terms used in 782 KAR Chapter 1.

Section 1. Definitions.

(1) "Applicant" means an individual who;

(a) Has requested vocational rehabilitation services in writing; and

(b) Is available to complete an assessment.

(2) "Communication" means the ability to comprehend, respond, and exchange information through:

(a) Spoken words;

(b) Written words;

(c) Sign language;

(d) Braille;

(e) Concepts;

(f) Gestures; or

(g) Other [Another] means.

(3) "Comparable benefits" means service, benefit, or financial assistance available to a consumer from a program other than the office which meets the cost of services to be provided under an individualized plan for employment.

(4) "Consumer" means an individual;

(a) Who has a visual impairment and possible secondary disabilities;

(b) Whose impairment constitutes or results in a substantial impediment to employment;

(c) Who may benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and

(d) Who has been determined eligible for vocational rehabilitation services by a rehabilitation counselor.

(5) "Consumer with a most significant disability" means a consumer whose:

(a) Severe impairment limits three (3) or more functional capacities in terms of employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(6) ~~["Consumer with a significant [nonsignificant] disability" means a consumer whose:~~

~~(a) Impairment limits one (1) or two (2) [more] functional capacities in terms of an employment outcome; and~~

~~(b) Rehabilitation requires two (2) or more services for a period of time.~~

~~(7)] "Consumer with a nonsignificant [significant] disability" means a consumer whose:~~

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(a) Severe impairment limits zero [two (2) or more] functional capacities in terms of an employment outcome; or [and]

(b) Rehabilitation requires zero or one (1) service[one (1) or ~~ne~~] [two (2) or more] [services] over an extended period of time.

(7) "Consumer with a significant disability" means a consumer whose:

(a) Impairment limits one (1) or two (2) functional capacities in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services for a period of time.

(8) "Correction" means the best visual functioning using conventional eyeglasses or contact lenses as prescribed by an ophthalmologist or optometrist.

(9) "Counselor" means a vocational rehabilitation counselor of the office.

(10) "Functional capacities" means:

- (a) Communication;
- (b) Interpersonal skills;
- (c) Orientation and mobility;
- (d) Self-care;
- (e) Self-direction;
- (f) Work skills; and
- (g) Work tolerance.

(11) "Institution of postsecondary education" means a university, college, proprietary school, technical institution, or the Kentucky Community and Technical College System.

(12) "Interpersonal skills" means the ability to make and maintain a personal, family, and community relationship.

(13) "Office" is defined by KRS 163.460(1).

(14) "Orientation and mobility" means the ability to travel independently to and from a destination in the community.

(15) "Progressive visual disorder" means a visual impairment that is:

(a) Not complete or fully developed when the impairment is diagnosed[at the time of medical diagnosis]; and

(b) Predicted, medically, to increase in extent or severity.

(16) "Self-care" means the ability to engage in activities of daily living including:

- (a) Personal grooming;
- (b) Home management; and
- (c) Health and safety needs.

(17) "Self-direction" means the ability independently to plan, initiate, problem solve, organize, and carry out a goal-directed activity.

(18) "Services" means any appropriate authorization for purchase to meet the vocational rehabilitation needs and to achieve the employment outcome of a consumer.

(19) "Work skills" means the ability to do a specific task required for a particular job.

(20) "Work tolerance" means the ability to sustain the required level of functioning in a work-related activity, with or without accommodations.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

FILED WITH LRC: September 15, 2011 at 11 a.m.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office for the Blind (As Amended at ARRS, November 7, 2011)

782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.470(3), 34 C.F.R. 361.48, 29 U.S.C. 706, 711, 723

STATUTORY AUTHORITY: KRS 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the Office for the Blind to promulgate ad-

ministrative regulations[office] to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation establishes the scope, nature, conditions, criteria, and procedures of provided services.

Section 1. Communication. The office shall provide information to applicants and consumers using the most effective mode of communication for the consumer or applicant, including:

- (1) Braille;
- (2) Large print;
- (3) Electronic format; [or]
- (4) Augmentation communication devices, or the spoken language.

Section 2. Vocational Goal. A service shall be provided in accordance with an individualized plan for employment that:

- (1) Emphasizes the determination and achievement of a positive employment outcome; and
- (2) Is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Section 3. Vocational Training at Institutions of Postsecondary Education. (1) A service provided at an institution of higher education shall comply with the provisions governing comparable benefits established in Section 16 of this administrative regulation.

(2)(a) Except as provided in paragraph (b) of this subsection, the amount paid by the office for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education.

(b) If the consumer's vocational goal requires a degree program not offered by an in-state public institution, the amount paid by the office for tuition shall be the amount charged for that degree program after comparable benefits are applied.

(3) The office shall use the school budget, awards, and need analysis for costs of tuition and fees, books, supplies, room, board, personal expenses, and transportation prepared by the student financial aid office of the institution and shall negotiate with the consumer the allocation of those costs.

(4) The office may pay a fee associated with attendance at an educational institution if the fee is required of an individual who attends the institution.

(5)(a) The consumer shall:

- 1. Maintain full-time status as defined by the institution;
- 2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or
- 3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year.

(b) All coursework shall facilitate the achievement of positive employment outcomes.

(6) By the end of the second term or semester and throughout each subsequent term or semester, a consumer [individual] shall achieve the higher of:

- (a) An overall "C" grade average; or
 - (b) Standing required for admission, licensure, or certification.
- (7) An exception to a requirement established in subsection (5) or (6) of this section shall:

- (a) Be granted if the consumer:
 - 1. Has a need or circumstance that renders him unable to meet the requirement; and
 - 2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.[;]
- (b) Not be granted for the requirements established in subsection (6) of this section for a period beyond one (1) semester.

(8) The consumer shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) If a consumer does not maintain the standards of this section, the counselor shall:

- (a) Terminate services at the institution of higher education; and
- (b) Simultaneously notify the consumer of the appeal process.

dure established in 782 KAR 1:040.

(10) A service terminated under subsection (9) of this section shall be reinstituted if the consumer:

(a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or

(b) Subsequently meets the standard under which the service was terminated.

Section 4. On-the-job-training. On-the-job-training provided in private or public employment shall be subject to the conditions established in this section:

(1) The consumer shall receive at least minimum wage and be paid commensurate with the prevailing wages for the job.

(2) The employer shall provide to the consumer the same benefits and privileges that accrue to other employees[employee].

(3) Prior to training, a written agreement shall be:

(a) Completed by the counselor, describing the goals and objectives of the training consistent with the needs of the employer, including:

1. The length of training;
2. The skills taught;
3. Wages earned;
4. Responsibility of the office; and
5. An understanding that the consumer shall be hired permanently after successful completion of the training program; and

(b) Signed by the:
1. Office; and
2. Employer.

(4) The consumer shall strive to make satisfactory progress in the training. The employer shall provide training reports in accordance with the agreement to the office documenting the satisfactory or unsatisfactory progress of the consumer.

(5) The agreement for on-the-job training shall be terminated by the counselor[consumer], the employer, or the consumer if the conditions of this section are not met.

Section 5. Work Experience. A program of work experience in private or public employment shall be provided according to the conditions established in this section:

(1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience. If used as a trial work experience, up to three (3) different experiences may be allowed, but shall be completed within a year not to exceed a total of 520 work hours.

(2) The consumer shall at least receive minimum wage.

(3) A written agreement shall be completed by the counselor and employer [~~or provider of services~~] to designate:

- (a) The length of the work experience;
- (b) Skills taught;
- (c) The number of hours to be worked each week; and
- (d) The payment that the individual shall receive; [~~and~~ (e) Any payment to the provider by the office.]

(4) The employer [~~or provider~~] shall monitor the performance of the individual in work experience and make periodic reports to the counselor.

(5) The agreement may be terminated by either party if the terms of the agreement are not being accomplished.

Section 6. Physical and Mental Restoration. (1) An applicant or consumer shall choose [~~chese~~] a qualified specialist who:

(a) Is licensed in the particular field of practice to provide the approved physical or mental restoration service; and

(b) Agrees to accept the office's allowable rate of payment.

(2) The medical diagnosis and prognosis shall indicate and recommend necessary restoration services. The office may obtain a second opinion before agreeing to pay for any restoration services.

Section 7. Out of State Services. [(4)] A rehabilitation service may be provided outside the Commonwealth of Kentucky, if:

(1) [(a)] The service meets the consumer's rehabilitation need;

(2) [(b)] The service is more convenient for the consumer;

(3) [(c)] The service is cost saving;

(4) [(d)] The service is not provided in state; and

(5) [(e)] The provision of an in-state service would delay service to a consumer at extreme medical risk.

Section 8. Maintenance. (1) Maintenance shall be provided only if necessary to support and derive the full benefit of other rehabilitation services being provided. Maintenance shall not supplant a consumer's responsibility to maintain his own residence and daily subsistence.

(2) Maintenance shall cease after the consumer has achieved an employment outcome and received the first paycheck.

(3) The office shall not pay more for a consumer's room and board at an institution of higher education than the highest rate for double occupancy at an in-state public institution.

(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 7 of 200 KAR 2:006.

Section 9. Transportation. Transportation for a consumer shall be paid in accordance with the requirements established in this section:

(1) Transportation by a public common carrier shall be in the most economical means available and in accordance with the rehabilitation needs of the consumer.

(2) Private transportation by private vehicle shall not exceed the mileage rate established for a state employee in Section 7 of 200 KAR 2:006.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for a state employee in Section 7 of 200 KAR 2:006.

(4) The total cost of transportation allowed for commuting between home and campus for a consumer who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for a consumer who resides on campus at an institution of higher education shall be limited annually to two (2) [~~six (6)~~] round trips between the consumer's home and the campus and total expense shall not exceed the school budget analysis for transportation.

(6) Transportation shall include relocation and moving expenses if necessary for a consumer to achieve placement in employment.

Section 10. Interpreter Services. Interpreter services shall be provided by qualified personnel:

(1) If sign language or an interpreter of tactile interpreting is a necessary means of communication for the consumer; and

(2) In conjunction with application and effective participation in other services.

Section 11. Reader Services. Reader services shall be provided for a consumer:

(1) If printed material in alternative format is not readily available through the volunteer recording services of the office; and

(2) In conjunction with application for services and to participate effectively in other rehabilitation services.

Section 12. Rehabilitation Technology. (1) The office shall obtain low vision devices for a consumer from [~~form~~] a provider who is licensed or certified to prescribe and fit the device.

(2) Assistive technology and adaptive devices recommended by an Assistive Technology Specialist shall be provided if necessary to improve the functional capabilities of the consumer in obtaining a positive employment outcome.

(3) Unusual or expensive assistive technology shall only be provided to an individual if use of a traditional aid or device is not feasible.

(4) A consumer shall return assistive technology to the office if it is no longer used for the purpose for which it was provided.

(5) Assistive technology shall be:

(a) Provided in a new or like new condition; and

(b) Repaired or replaced by the office if, during the course of the individualized plan for employment, it becomes:

1. Defective;

2. Worn out; or
3. Obsolete.

(6) The repair, maintenance, or replacement of the assistive technology shall be the responsibility of the consumer following closure or successful attainment of a positive employment outcome unless:

- (a) Necessary to maintain, regain, or advance in employment; or
- (b) ~~(e)~~ The Individualized Plan for Employment (IPE) includes extended services following~~at the time of~~ closure.

Section 13. Self-employment. (1) The office shall approve a self-employment for a consumer if:

(a)~~(4)~~ The consumer participates in a feasibility evaluation and development of a business plan;

(b)~~(2)~~ The vocational goal is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choices;

(c)~~(3)~~ The consumer attempts to secure additional resources to support the outcome; and

(d)~~(4)~~ The consumer:

1.~~(a)~~ Obtains the required:

a.~~1.~~ License;

b.~~2.~~ Permit;

c.~~3.~~ Certificate; or

d.~~4.~~ Lease; and

2.~~(b)~~ Operates in conformity with federal, state, and local statutes and regulations.

(2)~~(5)~~ The office's financial participation may be negotiated and shall be limited by the allocation and expenditure of vocational rehabilitation funds.

Section 14. Tools and Equipment. The consumer shall return tools, equipment, and supplies provided for employment if use by the consumer for that purpose ceases.

Section 15. Printed Materials. A textbook or other vocational material shall be made available in alternative format through the office's Accessible textbook services or other service providers.

Section 16. Comparable Benefits. (1) When the individualized plan for employment is developed, the consumer and vocational rehabilitation counselor may negotiate applications for comparable services.

(2) Grant assistance, including a gift, endowment, or scholarship not based upon merit, provided for a consumer enrolled in an institution of postsecondary education, shall be considered a comparable benefit.

(3) The following forms of financial assistance shall not be considered a comparable benefit for a consumer individual enrolled at an institution of postsecondary education:

(a) A guaranteed student loan;

(b) A national direct or student loan;

(c) A work-study payment;

(d) Other aid termed as self-help; or

(e) An unrestricted monetary award from a civic, professional, or social organization.

(4) Comparable benefits awarded for purposes of higher education shall be applied to the services designated by the granting authority.

(5) For any consumer who receives Social Security income benefits, one-third of the [his] monthly award shall be applied toward room and board for each month attending [he—attends] school.

Section 17. Participation of a Consumer in the Costs of Services. (1) Subject to subsection (2) of this section~~[paragraph (2)], the [The] financial need of an individual with a disability may [shall not] be considered by the office in the provision of services [although the consumer's participation shall be encouraged].~~

(2) Services Exempt from financial need shall include the following:

(a) Assessment for determining eligibility and priority for services;

(b) Assessment for determining vocational rehabilitation needs;

(c) Vocational rehabilitation counseling and guidance;

(d) Referral for other services;

(e) Job-related services;

(f) Personal assistance services; and

(g) Any auxiliary aid or service (e.g. interpreter services, reader services) for an individual with a disability required under 29 U.S.C. 723~~[section 504]~~ of the Rehabilitation Act or the Americans with Disabilities Act, 42 U.S.C. 12101 to 12213.

Section 18. Emergency Denial of Services. The office shall immediately suspend or terminate services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 19. A waiver to any limit established for the scope and nature of services shall be made at the discretion of the director of consumer services with sufficient documentation supporting the rehabilitation needs of the consumer.

(1) A request for a waiver shall be submitted to the director by either the counselor or the consumer.

(2) A written decision based upon the rehabilitation needs of the consumer shall be provided to the counselor and consumer within ten (10) working days of submission of the request.

Section 20. Order of Selection. If the executive director and State Rehabilitation Council determine that the agency lacks available funds to serve all consumers, the office shall follow an order of selection to give priority for services according to a ranking of categories of consumers based on the severity of disability as follows:

(1) Priority Category One (1) which shall include an individual with a most significant disability whose:

(a) Severe impairment limits three (3) or more functional capacities in terms of employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(2) Priority Category Two (2) which shall include an individual with a significant disability whose:

(a) Severe Impairment limits two (2) ~~[or more]~~ functional capacities in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services over an extended period of time.

(3) Priority Category Three (3) which shall include a consumer with a significant ~~[non-significant]~~ disability whose:

(a) Impairment seriously limits one (1) ~~[or more]~~ functional capacity ~~[capacities]~~ in terms of an employment outcome; and

(b) Rehabilitation requires two (2) or more services over a period of time.

(4) Priority Category Four (4) which shall include all other consumers, including consumers with a nonsignificant disability.

(5) The order of selection shall be implemented on a statewide basis.

(6) The office shall conduct an assessment to determine an individual's:

(a) Eligibility for vocational rehabilitation services; and

(b) Priority under the order of selection.

(7) The order of selection shall not apply to the following:

(a) The acceptance of a:

1. Referral; or

2. Applicant;

(b) The provision of assessment services to determine an individual's:

1. Eligibility for vocational rehabilitation services; or

2. Priority under the order of selection; or

(c) A consumer who is in the process of receiving services at the effective date of the order of selection.

(8) A consumer shall be immediately reclassified into a higher priority category if his level of impairment increases and is documented.

(9) In the order of selection, a consumer in a closed priority category shall be placed on a waiting list until the priority category is reopened.

(10) If vocational rehabilitation services cannot be provided to

all consumers in a given category, a waiting list based upon the date of eligibility for vocational rehabilitation services shall be used within a category.

(11) If sufficient funds become available, the executive director and the State Rehabilitation Council shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

FILED WITH LRC: September 15, 2011 at 11 a.m.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office for the Blind
(As Amended at ARRS, November 7, 2011)

782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 13B, 151B.225, 163.450-163.470, 29 U.S.C. 722, 34 C.F.R. Part 361

STATUTORY AUTHORITY: KRS 13B.170, 163.470(5), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. KRS 163.470(5) requires the Office for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. 29 U.S.C. 722(c) requires the office [department] to establish procedures so that a person seeking vocational rehabilitation services who is dissatisfied with determinations made by staff of the office concerning the furnishing, denial, reduction, suspension, or cessation of services may request a timely review of those determinations. This administrative regulation establishes those procedures.

Section 1. Hearing Officer. (1) To conduct a hearing under this administrative regulation, a hearing officer shall:

- (a) Be trained with respect to the performance of official duties; and
- (b) Have knowledge of:
 - 1. The delivery of vocational rehabilitation services;
 - 2. Federal and state laws; and
 - 3. Administrative regulations governing the provision of vocational rehabilitation services.];
- (2) To conduct a hearing under this administrative regulation, a hearing officer shall not:
 - (a) Be an employee of a public agency other than an:
 - 1. Administrative law judge;
 - 2. Hearing examiner; or
 - 3. Employee of an institution of higher education;
 - (b) Be a member of the Office for the Blind State Rehabilitation Council;
 - (c) Have been involved in a previous decision regarding the vocational rehabilitation of the applicant or eligible individual; or
 - (d) Have a personal or financial interest that conflicts with the objectivity of the individual.

Section 2. Mediation. (1) The office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.

(2) The office shall maintain a list of qualified mediators.

(3) The director of consumer [client] services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.

(5) The applicant or eligible individual shall attend the media-

tion and may be represented by an advocate or counsel.

(6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 3. Right of Appeal and Information. (1) An applicant or eligible individual may appeal to the director of consumer [client] services determinations made by the office [department] affecting:

(a) Furnishing of vocational rehabilitation benefits; or
(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

- 1. Entitlements available under this administrative regulation;
- 2. Right to appeal;
- 3. Right to be represented by an advocate or counsel; and
- 4. Names and addresses of office individuals with whom an appeal shall be filed.

(b) Request an appeal:

- 1. In writing;
- 2. By telephone through direct contact with the director of consumer [client] services or a designee; or
- 3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of consumer [client] services or a designee shall convene a hearing within sixty (60) days of the request. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate a service provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

- 1. Misrepresentation;
- 2. Fraud;
- 3. Collusion; or
- 4. Criminal conduct; or

(b) This action is requested by an:

- 1. Applicant;
- 2. Eligible individual; or
- 3. Authorized representative of an applicant or eligible individual.

Section 4. Client Assistance Program. The office shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created by KRS 151B.225;

(2) The services provided by the program; and

(3) How to contact a program representative.

Section 5. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual may appeal within sixty (60) days of becoming aware, through the exercise of due diligence, of a office determination affecting the provision or denial of vocational rehabilitation services. The applicant or eligible person may appeal, pursuant to the requirements of Section 3 of this administrative regulation.

(2) An applicant or eligible individual shall, when[at the time of] requesting a hearing:

(a) Identify accommodations required; and

(b) Submit an issue statement for the hearing.

(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and the State Rehabilitation Council.

(4) The applicant or eligible individual may disqualify for cause up to three (3) hearing officers randomly assigned by the Administrative Hearings Division of the Office of the Attorney General.

Section 6. Findings and Decision. (1) The hearing officer shall

complete and submit to both parties and the Secretary of the Education and Workforce Development Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension.

(2) Either party shall have twenty (20) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the Secretary of the Education and Workforce Development Cabinet.

(3) The Secretary of the Education and Workforce Development Cabinet shall consider the record including the recommended order and any timely exceptions filed to the recommended order.

(4) The Secretary of the Education and Workforce Development Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

FILED WITH LRC: September 15, 2011 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 for the Blind
(As Amended at ARRS, November 7, 2011)

782 KAR 1:070. Certified driver training program.

RELATES TO: KRS 186.480(1)(b), 186.576, 186.577(4), 186.578, 186.579, **189A.010**

STATUTORY AUTHORITY: KRS 186.578(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.578(7) requires the Office for the Blind to promulgate administrative regulations setting the standards for a certified driver training program to serve persons with a visual impairment. This administrative regulation establishes standards and procedures for the certified driver training program.

Section 1. Definitions. (1) "Applicant" is defined by KRS 186.576(1).

(2) "Bioptic telescopic device" is defined by KRS 186.576(3).

(3) "Certified driver rehabilitation specialist" means a person who has met basic professional criteria, passed a written test, and maintained continuing education requirements to be certified by the Association for Driver Rehabilitation Specialists, ADED, for the purpose of evaluating, educating, and training persons with disabilities to operate or drive motor vehicles and to prepare for a driving skills test. [(4) "Coordinator" means the coordinator of the Office for the Blind Bioptic Driving Program.]

(4) [(5)] "Office" is defined by KRS 186.576(8).

Section 2. Certified Driver Training Program Requirements. (1) Any person or entity may apply to the office [eoordinator] to become a certified driver training program that satisfies the following requirements:

(a) At least one (1) instructor is a certified driver rehabilitation specialist or is supervised by a certified driver rehabilitation specialist;

(b) All instructors meet the requirements of subsection (4) of this section;

(c) Any vehicle utilized:

1. Has a valid registration;

2. Is in sound mechanical order;

3. Has one (1) operable instructor brake;

4. Has signage indicating student driver on two (2) sides and rear of vehicle; and

5. Has adaptive equipment suitable for functional limitations of students;

(d) Maintains liability coverage that meets the minimum Kentucky insurance limits; and

(e) Uses a curriculum which meets the requirements of sub-

section (3) of this section.

(2) The following shall be submitted to the office [eoordinator]:

(a) Business name, address, telephone number, and office hours;

(b) Copy of the certifications and resumes of each proposed instructor;

(c) Description of the equipment, vehicles with adaptive devices, and facilities to be used in the certified driver training program;

(d) Copy of the valid vehicle registration;

(e) Copy of the liability insurance policy that includes a mandatory ten (10) day written cancellation notice by the insurer to the office;

(f) A detailed copy of the curriculum used; and

(g) The fees charged per hour, per lesson, or per course.

(3) The curriculum to be used shall consist of the following sections:

(a) A theoretical course of instruction that shall include:

1. Subject matter contained in the Kentucky Drivers Manual;

2. Safe driving practices and traffic laws;

3. The "SCAN, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;

4. Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;

5. Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;

6. Potential crash locations and situations such as intersections, hydroplaning, railroad crossings, multiple vehicle types in the traffic mix, and pedestrian traffic;

7. Seatbelt usage;

8. Speeding as a major contributing factor in vehicle crashes; and

9. Driver responsibility and accident reporting.

(b) A practical course instruction that shall include:

1. Demonstration, instruction, and practice in the use of the bioptic telescopic device; and

2. Behind the wheel demonstration, instruction, and practice:

a. For a minimum of thirty (30) hours for applicants who have never had an operator's license and fifteen (15) hours for applicants who have had an operator's license; and

b. Consisting of:

(i) Stopping;

(ii) Starting;

(iii) Shifting;

(iv) Turning;

(v) Backing;

(vi) Parallel parking;

(vii) Steering; and

(viii) Driving in residential, medium city, and highway traffic.

(4) Any instructor in an approved certified driver training program shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a four (4) year college degree. Experience as a professional driver education instructor **shall**[**may**] substitute year-for-year for the college education if the individual is a high school graduate or equivalent;

(c) Be of good moral character;

(d) Never have been convicted of a felony;

(e) Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;

(f) Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in the system;

(g) Possess a valid driver's license and have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;

(h) Not have had his driving privilege withdrawn for any reason in the past five (5) years;

(i) Enroll in and successfully complete the bioptic driving instructor training course offered by the office; and

(j) Obtain at least five (5) hours annually of continuing education in low vision.

(5) The certified driver training program shall review the driving history record and continuing education requirements of its instructors annually.

Section 3. Certification. (1) The office [coordinator] shall issue a certificate to an approved certified driver training program.

(2) Each certificate shall be valid for three (3) years from the date of issue. Certificates are not transferable. If there is a change of ownership, a new application shall be submitted.

Section 4. Performance Inspections. (1) The office [coordinator] may conduct a random or routine performance inspection of a certified driver training program.

(2) The certified driver training program shall be notified in writing of any deficiency discovered in the performance inspection.

(3) The deficiency shall be corrected prior to the next scheduled student or the certified driver training program's approval shall be withdrawn by the office.

Section 5. Acceptance Into a Certified Driver Training Program.

(1) An eligible applicant shall:

(a) Meet the minimum visual requirements of KRS 186.578(1);

(b) Obtain the bioptic telescopic device; and

(c) Successfully complete a functional visual assessment by the office [coordinator].

(2) An eligible applicant may be accepted into a certified driver training program.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: September 7, 2011

FILED WITH LRC: September 15, 2011 at 11 a.m.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone (502) 564-1481, fax (502) 564-9990.

**PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(As Amended at ARRS, November 7, 2011)**

806 KAR 49:050. Captive risk retention groups.

RELATES TO: KRS 304.1-050, 304.3-400 – 304.3-430, 304.3-500 – 304.3-570, 304.5-130, 304.5-140, 304.5-150, 304.9-020(10), 304.9-700 – 304.9-759, 304.24-100, 304.37-010 – 304.37-150, 304.45-020(11), 304.45-030, 304.49-010, 304.49-060, 304.49-110, 304.49-170

STATUTORY AUTHORITY: KRS 304.2-110, ~~[KRS]~~ 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to make administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.49-140 permits the commissioner to establish administrative regulations relating to captive insurance companies that are necessary to carry out the provisions of KRS 304.49-010 to 304.49-230. This administrative regulation provides reinsurance, financial solvency, and consumer protection requirements for captive risk retention groups.

Section 1. Definitions. (1) "Captive insurer" is defined by [in] KRS 304.49-010(3).

(2) "Commissioner" is defined by [in] KRS 304.1-050(1).

(3) "Department" is defined by [in] KRS 304.1-050(2).

(4) "Insurance producer" is defined by [in] KRS 304.9-020(10).

(5) "Protected cell" is defined by [in] KRS 304.49-010(20).~~;~~

(6) "Reinsurance intermediary" is defined by [in] KRS 304.9-700(5).~~;~~

(7) "Risk retention group" is defined by [in] KRS 304.45-020(11).

Section 2. Permitted Reinsurance for Risk Retention Groups Licensed as Captive Insurers. Risk retention groups shall not receive credit on a quarterly or annual financial statement if all policies are ceded through 100 percent reinsurance arrangements.

Section 3. Credit for Reinsurance. (1) Credit for reinsurance shall be permitted if the reinsurer complies with KRS 304.5-130, ~~[KRS]~~ 304.5-140, ~~[KRS]~~ 304.5-150 and 806 KAR 5:025.

(2) Credit for reinsurance may be permitted if the reinsurer:

(a) Maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization;

(b)1. Maintains a minimum policyholder surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements; and

2. Is licensed and domiciled in a jurisdiction in the United States or an established offshore domicile; or

(c) Satisfies all of the following requirements:

1. The captive manager or risk retention group licensed as a captive insurer shall file annually, on or before June 30, the reinsurer's audited financial statements, which shall be analyzed by the commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;

2. The reinsurer shall demonstrate that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than three (3) to one (1);

3. The affiliated reinsurer shall not write third-party business without obtaining prior written approval from the commissioner;

4. The reinsurer shall not use a protected cell arrangement without obtaining prior written approval from the commissioner;

5. The reinsurer shall be licensed and domiciled in a jurisdiction either in the United States or in an established offshore domicile; and

6. The reinsurer shall submit to the examination authority of the commissioner.

Section 4. Additional Reinsurance Requirements. (1) The commissioner shall require a reinsurer not domiciled in the United States to:

(a) Include language in the reinsurance agreement that states that if the reinsurer fails~~[in the event of the reinsurer's failure]~~ to perform its obligations under the terms of its reinsurance agreement, the reinsurer shall submit to the jurisdiction of any court of competent jurisdiction in the United States; or

(b) Be compliant with subsection (2) of this section.

(2) For credit for reinsurance and solvency regulatory purposes, the commissioner may require a reinsurer to provide to the ceding company an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported claims reserves.

Section 5. Requirements for Waiver. (1)(a) Upon application by the risk retention group, the commissioner may waive either of the reinsurance requirements in Section 3(2)(c)2. or Section 3(3)(c)6. of this administrative regulation ~~if [in circumstances where]~~ the risk retention group licensed as a captive insurer or reinsurer can demonstrate that:

1. The reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;

2. The reinsurer is licensed and domiciled in a jurisdiction in the United States or in an established offshore domicile; and

3. The proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders.

(b) Any waiver granted in accordance with subsection (1)(a) of this section shall be:

1. Included in the risk retention group's plan of operation, or any subsequent revision or amendment of the plan; and

2. Submitted by the risk retention group licensed as a captive to the commissioner of its state of domicile and each state in which the risk retention group licensed as a captive intends to do business or is currently registered.

(c) Any waiver of a requirement in Section 3(2)(c)2. or Section 3(2)(c)6. of this administrative regulation shall be considered a change in the risk retention group's plan of operation in each of those states.

(2)(a) Upon application by the risk retention group, the commissioner may waive the requirements of Section 4(1) or [Section 4](2) of this administrative regulation if the risk retention group licensed as a captive insurer or reinsurer can demonstrate that:

1. The reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;

2. The reinsurer is licensed and domiciled in a jurisdiction in the United States or in an established offshore domicile; and

3. The proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders.

(b) Any waiver granted in accordance with subsection (2)(a) of this section shall be disclosed in Note 1 of the risk retention group's annual statutory financial statement.

Section 6. Limits on Risk. A risk retention group shall not retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten (10) percent of its surplus to policyholders. Authorized reinsurance ceded shall be deducted in determining risk retained. The requirements on limits of risk in KRS 304.24-100 shall apply to newly formed domestic mutual insurers.

Section 7. Holding Company. Risk retention groups licensed as captive insurers shall make all required holding company filings mandated in KRS Chapter 304.37[KRS Chapter 37] on forms prescribed in 806 KAR 37:010. If a disclaimer of affiliation is filed, a copy of the disclaimer shall be filed as a change in business plan with all other states in which the company is registered.

Section 8. Reinsurance Intermediaries, Managing General Agents, and Producer Controlled Agents. A risk retention group licensed as a captive insurer shall comply with KRS 304.3-400 to [KRS] 304.3-430, [KRS] 304.3-500 to [KRS] 304.3-570, and [KRS] 304.9-700 to [KRS] 304.9-759.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 15, 2011 at 9 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.

**ENERGY AND ENVIRONMENT CABINET
Kentucky State Board on Electric Generation
and Transmission Siting
(As Amended at ARRS, November 7, 2011)**

807 KAR 5:100. [Board] Application fees.

RELATES TO: KRS 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716[, 2011 Ky. Acts ch. 82, sec. 6]

STATUTORY AUTHORITY: KRS 278.702(3), 278.706(3), 278.706(5), 278.714(6) [KRS 278.040(3)]

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 authorizes[creates] the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires[directs] the permanent members of the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716. KRS 278.706(3) requires[provides] that application fees for a construction certificate shall be established[set] by the board and deposited into a trust and agency account to the credit of the Kentucky Public Service Commission. KRS 278.706(5) requires[directs] the board to promulgate administrative regulations establishing fees to cover the expenses associated with review of applications filed pursuant to KRS 278.700 to 278.716[278.704]. KRS 278.706(5) also requires[provides] that, if a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses for review of the application, including the board's expenses associated with legal review of the application, the board shall assess a supplemental application fee to cover the additional expenses. [An application filed with the board concerns: (1) construction of a merchant electricity-generating plant; (2) transfer of authority to construct and operate a merchant electricity-generating plant;] or [(3) construction of a nonregulated transmission line; or (4) construction of a carbon dioxide transmission pipeline.] KRS 278.706(5) requires[provides] that an applicant's failure to pay a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application. KRS 278.714(6)(a) requires [directs] the board to promulgate administrative regulations to establish an application fee for a construction certificate for nonregulated electric transmission lines and carbon dioxide transmission pipelines. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee shall[may] be assessed.

mental application fee to cover the additional expenses. [An application filed with the board concerns: (1) construction of a merchant electricity-generating plant; (2) transfer of authority to construct and operate a merchant electricity-generating plant;] or [(3) construction of a nonregulated transmission line; or (4) construction of a carbon dioxide transmission pipeline.] KRS 278.706(5) requires[provides] that an applicant's failure to pay a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application. KRS 278.714(6)(a) requires [directs] the board to promulgate administrative regulations to establish an application fee for a construction certificate for nonregulated electric transmission lines and carbon dioxide transmission pipelines. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee shall[may] be assessed.

Section 1. Application Fee to be Filed with an Application to Construct a Merchant Electricity Generating Plant. A person seeking to obtain a certificate to construct a merchant electricity generating plant shall submit with the[its] application submitted in accordance with 807 KAR 5:110 to the Kentucky State Board on Electric Generation and Transmission Siting, at the offices of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky, an initial application fee of \$1,000 per megawatt of electricity generating capacity, based on the manufacturer's nameplate rated capacity of the proposed construction, except that the initial application fee for each application for each plant shall be in an amount not less than \$40,000 and not more than \$200,000.

Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated Transmission Line. A person seeking board approval of construction of a nonregulated transmission line shall file with the[its] application submitted in accordance with 807 KAR 5:110 to the board a fee of fifty (50) dollars per kilovolt of rated capacity per mile of length, except that the initial application fee shall be in an amount not less than \$10,000 and not more than \$200,000.

Section 3. Application Fee to be Filed with an Application to Construct a Carbon Dioxide Transmission Pipeline. A person seeking board approval of construction of a carbon dioxide transmission pipeline shall file with the[its] application submitted in accordance with 807 KAR 5:110 to the board a fee of \$500 per mile of length, except that the initial application fee shall be in an amount not less than \$10,000 and not more than \$200,000.

Section 4. Application Fee to be Filed with an Application to Transfer a Certificate to Construct a Merchant Electricity Generating Facility. A person seeking board approval to transfer a[any] right or obligation associated with a certificate granted by the board to construct a merchant electricity generating facility shall file with the[its] application submitted in accordance with 807 KAR 5:110 to the board[, at the offices of the Kentucky Public Service Commission, at 211 Sower Boulevard, Frankfort Kentucky], an initial application fee of \$5,000.

Section 5[4]. Supplemental Application Fee. **(1)** No sooner than thirty (30) days after an application has been filed and no later than sixty (60) days after issuance of the board's final decision on an application or, if an applicant has sought judicial review in accordance with KRS 278.712(5), no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall[may] assess a supplemental application fee to cover an expense related to review of an application filed pursuant to KRS 278.704, 278.710, or 278.714, for which the initial application fee is insufficient.

(2) The supplemental fee shall be assessed by order containing an accounting of each expense for which the supplemental fee is assessed.

Section 6[5]. Refund. No later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall

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refund to the applicant any amount paid ~~that~~[which] exceeds the amount expended by the board.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 1 p.m.

CONTACT PERSON: Quang Nguyen, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502) 564-3940, fax (502) 564-3460.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Kentucky State Board on Electric Generation
and Transmission Siting
(As Amended at ARRS, November 7, 2011)

807 KAR 5:110. Board proceedings.

RELATES TO: KRS 61.870-61.844, 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716, and 2011 Ky. Acts ch. 82, sec. 6 [278.702(3)]

STATUTORY AUTHORITY: KRS 278.702(3), 278.706(2)(c), 278.712(2) [KRS-278.040(3)]

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702(3) authorizes [creates] the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication shall[may] be addressed to [“]Kentucky State [Siting] Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615[40604][“].

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant, or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky [40604] 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of the[such-a] Notice of Intent to File Application, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

- (a) The name, address, and telephone number of the person who intends to file the application;
- (b) A brief description of the proposed construction that will be the subject of the application;
- (c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;
2. The street address and latitude and longitude of the site of the construction to be proposed; and
3. If[Whether] the proposed construction will be within the boundaries of a city;
- (d) The address of the planning and zoning commission, if any,

with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to if[whether] a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602[40604].

(2) A paper copy of an application shall:

- (a) Be in a bound volume with each document tabbed; and
- (b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine if[whether] the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary shall[may] reject for filing any document that [on its face] does not comply with an administrative regulation in 807 KAR Chapter 5[of the board].

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

- (a) That he has a special interest in the proceeding; or
- (b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

Section 5. Confidential Material. (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the executive director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, establish[set forth] each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material that[which] identifies, by underscoring, highlighting with transparent ink, or other comparable[reasonable] method, only the portion alleged to be confidential. A text page or portion thereof that[which] does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material [which is] identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884, shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in ~~a[any]~~ proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or ~~another[any other]~~ party to the proceeding. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, the party[~~it~~] shall follow the ~~[""]~~procedure for determining confidentiality established[~~ed~~] in subsection (2) of this section. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding. The petition shall include a description of any effort made to enter into a protective agreement. Unwillingness to enter into a protective agreement shall be fully explained. A party may respond to the petition. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board. The board shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure established[set out] in this section, shall[~~may~~] obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing. If confidential material is considered during a formal hearing, it shall be considered as established in[~~by~~] the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise shall no longer warrant[warrants] confidential treatment.

(a) ~~[(10)]~~ The petitioner who sought confidential protection shall inform the executive director in writing if ~~[any]~~ material granted confidentiality becomes publicly available.

b)1. If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving the petitioner ten (10) days to respond.

2. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, the[such] information shall not be deemed [or considered] to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following an[any] order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 6. Evidentiary Hearings. (1) Upon its own motion or on

written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board shall[~~may~~] schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for ~~[his]~~ objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. If applicable, a party of record shall[~~may~~] file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local public hearing or local public information meeting may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least ~~fourteen (14)~~ twenty (20) days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge or executive[judge/executive] of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least ~~three (3)~~ five (5) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least ~~five (5)]~~ three (3) days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that ~~[it has given]~~ the general public has been provided notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice the following information:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant, or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 at 1 p.m.

CONTACT PERSON: Quang Nguyen, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502)564-3940, fax (502)564-3460.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, November 7, 2011)**

810 KAR 1:090. Kentucky Thoroughbred Development Fund.

RELATES TO: KRS 138.510, 230.225(5)(c)[230.225(7)(b)], 230.400[, 138.510]

STATUTORY AUTHORITY: KRS 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and KRS 230.400(7) authorizes the Kentucky Horse Racing Commission[Authority] to promulgate administrative regulations as may be necessary to carry out its[the] provisions and purposes [of KRS 230.400]. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund[this fund].

Section 1. Definitions. (1) "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar."Allowance race" means an overnight thoroughbred race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins. "Allowance race" shall include allowance optional claiming races if the horse is entered under allowance conditions and not eligible to be claimed, but excludes starter allowance races.]

(2) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.

(3) "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky. [(4) "KHRA" means the Kentucky Horse Racing Authority.]

[(4)][(5)] "KTDF" means the Kentucky Thoroughbred Development Fund.

[(5)][(6)] "KTDF Advisory Committee" means the committee established by KRS 230.400(2) to advise and assist the KHRC[KHRA] in the development of a supplemental purse program pursuant to KRS 230.400(3)(a).

[(6)][(7)] "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.

[(7)][(8)] "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.

[(8)][(9)] "Nonclaiming maiden race" means a thoroughbred race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are[is] [eligible to be claimed.]

[(8)][(9)][(10)] "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.

[(9)][(10)] "Official Registrar" means the association recognized and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.[(11)] "KTDF eligible horse" means a horse registered with the Kentucky Thoroughbred Development Fund.

[(12)] "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.]

Section 2. KTDF Monies Earned. (1) One live thoroughbred association.

(a) Live racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2)[, (3), and (4)].

(2) More than one (1) live[.] thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as follows:

(a) The association conducting the live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The Intra-state wagering monies shall be allocated to that Kentucky thoroughbred association[associations][track] on which the wagering is placed for purposes of calculating that association's[track's] KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's[track's] KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

Section 3. KTDF Reconciliation. (1) Each association shall file with the commission[KHRA] a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission[KHRA] the actual KTDF purse distribution no later than fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission[KHRA] shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet which has not been distributed in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the approval of the KTDF Advisory Committee and the commission[KHRA]:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) Reasonable and customary administrative charges for time spent reconciling the KTDF account shall be charged to each association by the commission[KHRA] based on the percentage of funds generated by each association for the previous calendar year.

(6) An association, at its option, may pay advertising charges billed to the association by the KTOB from the association's KTDF available balance.

(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement

of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the commission[KHRA] whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

Section 5. Consent to Investigate by KTDF Applicants. The filing of a registration with the official registrar shall authorize the KTDF Advisory Committee and commission to investigate and verify information provided by the Applicant.

Section 6. Denial or Revocation of Registration. (1) The KTDF Advisory Committee may recommend to the commission to deny or revoke the registration of a horse to the KTDF if the Applicant:

(a) Provides the official registrar of the KTDF, the KTDF Advisory Committee, or the commission with incorrect, false, or misleading information concerning the registration of a foal or horse; or

(b) Violates this administrative regulation in any other manner.

(2) An applicant who provides incorrect, false, or misleading information concerning the registration of a foal or horse or violates this administrative regulation in any other manner shall be subject to the following penalties:

(a) Denial or revocation of the registration of the horse with the KTDF; or

(b) A bar of the applicant from registering foals or horses to the KTDF for a period of one (1) to five (5) years, based on the seriousness of the violation, beginning with the year in which the violation occurred.[-; and]

(3)[(c)] A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant from being eligible to receive KTDF monies.

(4)[(3)] The denial or revocation of the registration of a horse to the KTDF, and a bar of the applicant from registering foals or horses to the KTDF shall be subject to appeal and adjudication in accordance with 810 KAR 1:029 and KRS Chapter 13B.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 13, 2011

FILED WITH LRC: September 14, 2011 at 3 p.m.

CONTACT PERSON: Timothy A. West, Assistant General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, November 7, 2011)

900 KAR 6:075. Certificate of Need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.095, 216B.455, 216B.990
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 necessary for consideration for nonsubstantive review of applications 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) "Days" means calendar days, unless otherwise specified.

(4) "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.(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.

(8) "Therapeutic cardiac catheterization outcomes" means in hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests and emergency open heart surgeries performed as a result of the PCI.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a)[4-] There is no substantial change in health services or bed capacity; and

(b)1.[2-] The change of location or relocation is within the same county; or

2.[(b)] The change of location is for a psychiatric residential treatment facility[-; or

(b) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.455 and is to the same campus as a licensed psychiatric residential treatment facility].

(2) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(f), the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicenss those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(d) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;[-]

(e) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care

beds such as neonatal Level II beds or neonatal Level III beds;

2. **Convert and** implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(f) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(g) ~~The proposal involves an application to establish a nursing facility with no more than sixty-two (62) nursing facility beds and the requirements established in this paragraph are met.~~

~~1. The applicant is an existing licensed psychiatric hospital operated by the Commonwealth of Kentucky;~~

~~2. The proposed nursing facility shall be located on the psychiatric hospital's campus; and~~

~~3. The letter of intent is filed no later than March 1, 2010 and the application is filed no later than March 31, 2010;~~

~~(h) The proposal involves an application to establish a psychiatric hospital with no more than fifty (50) psychiatric beds and the requirements established in this paragraph are met.~~

~~1. The letter of intent is filed no later than March 1, 2010 and the application is filed no later than March 31, 2010;~~

~~2. The proposed psychiatric hospital shall be located in an area development district (ADD) which does not contain a licensed psychiatric hospital;~~

~~3. The applicant proposes to provide services only to individuals between the ages of four (4) and twenty-one (21);~~

~~4. The patient population to be served shall be limited to children with documented evidence of mental retardation or a developmental disability as defined under 907 KAR 1:145; physical aggression; or inappropriate sexual behavior;~~

~~5. The facility shall not refuse to admit a patient or discharge a patient due to the presence of the characteristics described in subparagraphs 3 and 4 of this paragraph;~~

~~6. The proposed psychiatric hospital shall have on staff a board-eligible or board-certified child psychiatrist who maintains responsibility for admissions and treatment. The board-eligible child psychiatrist shall be a doctor of psychiatry who has been board-certified in general psychiatry by the American Board of Psychiatry and Neurology and has completed a two (2) year fellowship in child psychiatry; and~~

~~7. The application shall include all of the following:~~

~~a. The specific number of psychiatric beds proposed;~~

~~b. An inventory of current psychiatric services in the Area Development District;~~

~~c. Clear admission and discharge criteria;~~

~~d. Linkage agreements with other child and adolescent serving agencies in the proposed service areas, including all regional interagency councils, community mental health centers, the Department for Community Based Services, and major referring school systems. These agreements shall demonstrate a commitment by these agencies and the hospital to joint treatment and discharge planning as appropriate; and~~

~~e. Documentation of linkage agreements for the provision for case management services if necessary after discharge. A case manager:~~

~~(i) May be on the hospital's staff; and~~

~~(ii) Shall be closely involved in cases from treatment planning onward;~~

~~(i) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.~~

peutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years; or

~~(h)(i)]~~ The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055.

(3) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

(4) If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5)(a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10)

days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c) Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan.

(7) Unless a hearing is requested pursuant to 900 KAR 6:090, the [The] Office of Health Policy [cabinet] shall approve **each application for a certificate of need that has** [applications for certificates of need that have] been granted nonsubstantive review status [by the Office of Health Policy] if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure, and the Office of Health Policy [cabinet] finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Applicant is not entitled to nonsubstantive review status; or

(b) Presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) A decision to [The cabinet shall] approve or disapprove an application which has been granted nonsubstantive review status shall be rendered [by the Office of Health Policy] within thirty-five (35) days of the date [that public notice is given] that nonsubstantive review status has been granted.

(10) If a certificate of need is disapproved [denied] following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

CARRIE BANAHAH, Executive Director

For JANIE MILLER, Secretary

APPROVED BY AGENCY: October 12, 2011

FILED WITH LRC: October 12, 2011 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 Public Health

Division of Public Health Protection and Safety

(As Amended at ARRS, November 7, 2011)

902 KAR 100:142. Wire line service operations.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 39[.77]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 C.F.R. 39[.77]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires [authorizes] the Cabinet for Health and Family Services [Human Resources] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration, and subsurface tracer studies.

Section 1. Agreement with Well Owner or Operator. (1) A licensee shall not perform a wire line service operation [operations] with a sealed source in a well or well-bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well or land owner, or drilling contractor that:

[a] [(4)] If a sealed source is lodged downhole, a reasonable effort at recovery shall be made;

[b] [(2)] If a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;

[c] [(3)] A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;

[d] [(4)] The radiation monitoring required in Section 14[20] of this administrative regulation shall be performed;

[e] [(5)] If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and

[f] [(6)] If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 23 of this administrative regulation shall be met.

[2] [(7)] The licensee shall retain a copy of the written agreement with the well operator, well or land owner, or drilling contractor for three (3) [two (2)] years after completion of the well logging operations.

Section 2. Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in a manner that the requirements of 902 KAR 100:019 and [902-KAR] 100:070[.] shall be met.

Section 3. Storage Precautions. (1) Sources of radiation, except accelerators, shall be provided with a lockable storage or transport container.

(2) The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

[3] [(2)] Sources of radiation shall be stored in a manner that [which] shall minimize the danger from explosion or fire.

Section 4. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 5. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments, capable of detecting beta and gamma radiation, at each field station and temporary jobsite to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019.

(2) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) millirem [milliroentgen] (.001 mSv) per hour through at least fifty (50) millirem [milliroentgens] (0.5 mSv) per hour.

(3) A radiation survey instrument shall be calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) So that accuracy within plus or minus twenty (20) percent of the true radiation level shall [may] be demonstrated on each scale.

(4) Records of calibration shall be maintained for a period of two (2) years for inspection by the cabinet.

Section 6. Leak Testing of Sealed Sources. (1) A licensee who uses a sealed source [Sealed sources] of radioactive material shall have the source [be] tested for leakage as specified in this section [and contamination pursuant to 902 KAR 100:060]. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the cabinet.

(2) Method of Testing.

(a) The wipe of a sealed source shall be performed using a leak test kit or method approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;

(b) The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumu-

late;

(c) The wipe sample shall be analyzed for radioactive contamination; and

(d) The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, **as established in 10 C.F.R. Part 39.35.**

(3) Test Frequency.

(a) Each sealed source, except an Energy Compensation Source (ECS), shall be tested at intervals not to exceed six (6) months;

(b) In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.

(4)(a) Each ECS, not exempted by subsection (7)(6) of this section, shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made with the three (3) years before the transfer, the ECS shall not be used until tested.

(5) Removal from service:

(a) If the test conducted under subsections (1) and (2) of this section reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee authorized to perform these functions:

(b) The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee that is authorized to perform these functions.

(6) The licensee shall submit a report to the cabinet within five (5) days of receiving the test results, and the report shall describe the equipment involved in the leak, the test results, contamination that resulted from the leaking source, and the corrective actions taken up to the time that report is made.

(7) The following sealed sources shall be exempt from the periodic leak test requirements in subsections (1) through (5) of this section:

(a) Hydrogen – 3 (tritium) sources;

(b) Sources containing radioactive material with a half-life of thirty (30) days or less;

(c) Sealed sources containing radioactive material in gaseous form;

(d) Sources of beta- or gamma-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less; and

(e) Sources of alpha- or neutron-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sources of radiation received or possessed by the licensee or registrant.

(2) Records of inventories shall be maintained for **at least** two (2) years from the date of the inventory for inspection by the cabinet and shall include:

- (a) The quantities and kinds of sources of radiation;
- (b) The location where sources of radiation are assigned;
- (c) The date of the inventory; and
- (d) The name of the individual conducting the inventory.

Section 8. Utilization Records. A licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for **at least** two (2) years from the date of the recorded event showing the following information for each source of radiation:

- (1) A description (or make and model number or serial number) of each source of radiation used;
- (2) The identity of the logging supervisor responsible for the radioactive material and identity of logging assistant present;
- (3) Locations where used and dates of use; and
- (4) In the case of tracer materials and radioactive markers, the

utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 9. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

- (a) Be of double encapsulated construction; [and]
- (b) Contain radioactive material whose chemical and physical form shall be as insoluble and nondispersible as practicable; and [-]
- (c) Meets the requirements of paragraphs (2), (3), and (4) of this section.

(2) For a sealed **source[sources][sources]** manufactured on or before July 14, 1989, a licensee may use the sealed source in well logging applications if it meets the requirements of USASI N5.10-1968, Classification of Sealed Radioactive Sources, or the requirements in **subsections[paragraphs]** (3) or (4) of this section [-, except those containing radioactive material in gaseous form, in the absence of a certificate from a transferor certifying that an individual or a prototype sealed source meets the above criteria, the sealed source shall not be put into use until the determinations and testing have been performed].

(3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources – Classification [or sealed source prototype, except those containing radioactive material in gaseous form, used in downhole operations, shall be certified by the manufacturer, or other testing organization acceptable to the cabinet, as meeting the sealed source performance requirements for temperature, impact, vibration, puncture, and pressure tests for oil well logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification"].

(4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a) Temperature. The test source shall be held at minus forty (40) degrees Centigrade for twenty (20) minutes, 600 degrees Centigrade for one (1) hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Centigrade to twenty (20) degrees Centigrade within fifteen (15) seconds;

(b) Impact test. A five (5) kilogram steel hammer, two and five-tenths (2.5) centimeters in diameter, shall be dropped from a height of one (1) meter onto the test source;

(c) Vibration test. The test source shall be subject to a vibration from twenty-five (25) Hz to 500 Hz at five (5) g amplitude for thirty (30) minutes;

(d) Puncture test. A one (1) gram hammer and pin, three-tenths (0.3) centimeter in diameter, shall be dropped from a height of one (1) meter onto the test source.

(e) Pressure Test. The test source shall be subject to an external pressure of 1.695×10^7 pascals (24,600 pounds per square inch absolute).

(5) The requirements in subsections (1) through (4) of this section shall not apply to sealed sources that contain radioactive material in gaseous form.

(6) The requirements in subsections (1) through (4) of this section shall not apply to ECS sources, which shall be registered with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.

(7) Certification documents shall be maintained for inspection by the cabinet for a period of **at least** two (2) years after source disposal.

(8) For sources abandoned downhole, certification documents shall be maintained until their disposal is authorized by the cabinet.

Section 10. Labeling. (1) A source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label **that** [which] has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.

(2) This labeling shall be on the smallest component, for ex-

ample, source, source holder, or logging tool, that is transported as a separate piece of equipment.

(3) A transport container shall have permanently attached to it a durable legible and clearly visible label that [which] has, at [as] a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 11. Inspection and Maintenance. (1) A licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.

(2) Records of inspection and maintenance shall be maintained for a period of at least two (2) years for inspection by the cabinet.

(3) If an inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(4) The repair, opening, or other modification of a sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.

Section 12. Training Requirements. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor until the individual has:

(a) [~~Has successfully~~] Completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission[;] covering the subjects outlined in Section ~~28~~[24] of this administrative regulation and shall have demonstrated an understanding of the subjects;

(b) [~~Has~~] Received copies of and demonstrated an understanding of the following:

1. The requirements contained in this administrative regulation;

2. [~~Other applicable~~] Provisions of 902 KAR Chapter 100;

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating and emergency procedures;

(c) [~~Has~~] Completed on-the-job training and demonstrated competence in the use of sources of radiation, related handling tools, and radiation survey instruments that [which] shall be employed in his assignment; and

(d) [~~Has~~] Demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.

(2) A licensee or registrant shall not permit an individual to act as a logging assistant until the individual has:

(a) [~~Has~~] Read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation[;] and other applicable provisions of 902 KAR Chapter 100 and shall have demonstrated understanding of the subjects;

(b) [~~Has~~] Demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that [which] will be employed in his assignment; and

(c) [~~Has~~] Demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.

(3) A licensee or registrant shall maintain employee training records[;] for inspection by the cabinet for at least two (2) years following termination of employment.

Section 13. Operating and Emergency Procedures. The licen-

see's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed so that an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;

(4) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination;

(5) Methods and occasions for locking and securing sources of radiation;

(6) Personnel monitoring and the use of personnel monitoring equipment;

(7) Transportation to temporary job sites and field stations, including:

(a) Packaging of sources of radiation in the vehicles;

(b) Placarding of vehicles, if needed; and

(c) Physically securing sources of radiation during transportation to prevent accidental loss, tampering, or unauthorized removal;

(8) Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material;

(9) The procedure for notifying proper personnel in the event of an accident;

(10) Maintenance of records, including records generated by logging personnel at temporary jobsites;

(11) The inspection of sealed sources;

(12) The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;

(13) The procedures that shall be followed in the event a sealed source is lodged downhole;

(14) Picking up, receiving, and opening packages containing radioactive material;

(15) Decontamination of the environment, equipment, and personnel[;] if tracers are used; and

(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:

(a) Prevent the spread of contamination;

(b) Minimize inhalation and ingestion of radioactive material; and

(c) Obtain suitable radiation survey instruments as required by Section ~~5~~[6] of this administrative regulation.

Section 14. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless the individual wears, at all times [~~either a film badge or a thermoluminescent dosimeter (TLD)~~] during well service operations utilizing sources of radiation, a personal dosimeter that is processed and evaluated by an accredited NVLAP processor.

(2) A personal dosimeter [~~film badge or thermoluminescent dosimeter (TLD)~~] shall be assigned to and worn by only one (1) individual.

(3) Film badges shall be replaced monthly and other personal dosimeters [TLDs] replaced at least quarterly.

(4) After replacement, a personal dosimeter [~~film badge or TLD~~] shall be promptly processed.

(5) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes [their] disposal.

Section 15. Security. During logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 16. Handling Tools. The licensee shall provide and require the use of tools that shall assure remote handling of sealed sources other than low activity calibration sources.

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Section 17. Tracer Studies. (1) Protective gloves and other appropriate protective clothing shall be used by personnel handling radioactive tracer material.

(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.

(3) A licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 18. Uranium Sinker Bars. The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION – RADIOACTIVE – DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

Section 19. Energy Compensation Source (ECS). (1) The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of radioactive material not exceeding 100 microcuries (3.7 MBq).

(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Sections 6, 7, and 8.

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the energy compensation source is only subject to the requirements of Sections 1, 6, 7, 8, and 25.

Section 20. Use of a Sealed Source in a Well Without a Surface Casing. A licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure, approved by the Cabinet, for reducing the probability of the source becoming lodged in the well.

Section 21 [48]. Particle Accelerators. A licensee or registrant shall not permit above ground testing of particle accelerators if the testing will result [which results] in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be met.

Section 22. Tritium Neutron Generator Target Source. (1) Use of a tritium neutron generator target source, containing quantities not exceeding thirty (30) curies (1,110 GBq) and in a well with a surface casing to protect fresh water aquifers shall be established in this administrative regulation, except Sections 1, 9, and 27.

(2) Use of a tritium neutron generator target source, containing quantities exceeding thirty (30) curies (1,110 GBq) or in a well without a surface casing to protect fresh water aquifers shall be established in this administrative regulation, except Section 9 of this administrative regulation.

Section 23 [49]. Radiation Surveys. (1) A radiation survey [Radiation surveys] shall be made and recorded for [of] each area where radioactive materials are stored and used.

(2) A radiation survey [Radiation surveys] shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.

(3) Each survey [The surveys] shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(4) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.

(5) [(4)] A radiation survey [Radiation surveys] shall be made and recorded at the job site or well head for tracer operations, except for those using hydrogen-3, carbon-14, and sulfur-35.

(6) [(5)] Each survey [The surveys] shall include radiation levels prior to and after the operation.

(7) [(6)] Records required pursuant to this section shall include:

- The dates;
- The identification of the individual making the survey;
- Identification of survey instrument used; and

(d) An exact description of the location of the survey.

(8) [(7)] Each survey record [Records of these surveys] shall be maintained for inspection by the cabinet for at least two (2) years after completion of the survey.

Section 24 [20]. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.

(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.

(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if present, to check for contamination resulting from damage to the sealed source.

Section 25 [24]. Records Required at Field Stations. A licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:

- Appropriate license or certificate of registration;
- Operating and emergency procedures;
- A copy of 902 KAR 100:019, 100:142, and 100:165;
- Survey records required pursuant to Section 23[49] of this administrative regulation;
- Quarterly inventories required pursuant to Section 7 of this administrative regulation;
- Utilization records required pursuant to Section 8 of this administrative regulation;
- Records of inspection and maintenance required pursuant to Section 11 of this administrative regulation;
- Records of the latest survey instrument calibration pursuant to Section 5[6] of this administrative regulation;
- Records of the latest leak test results pursuant to Section 6 of this administrative regulation; and
- Training records required by Section 12 of this administrative regulation.

Section 26 [22]. Records Required at Temporary Job Sites. (1) A licensee or registrant conducting a well service operation [operations] at a temporary job site shall have the following records available at that site for inspection by the cabinet:

- Operating and emergency procedures;
- Survey records required pursuant to Section 23[49] of this administrative regulation for the period of operation at the site;
- Evidence of current calibration for the radiation survey instruments in use at the site; and
- The shipping papers for the transportation of radioactive materials.

(2) In addition to the record requirements of this section, at each temporary job site where a well service operation is [operations are being] conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records available for inspection by the cabinet:

- Current leak test records for the sealed sources in use at the site;
- The appropriate license and[;] certification of registration or equivalent document; and
- Shipping papers for the transport of radioactive material.

Section 27 [23]. Notification of Incidents and Lost Sources. (1) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall:

- Immediately notify by telephone the Cabinet for Health and Family Services [Human Resources], Radiation Health [Control] Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through

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Friday ~~or [and]~~ at (800) 255-2587 ~~[(502)-564-8745]~~ at other hours; and

(b) Within thirty (30) days, notify by confirmatory letter to the Manager, Radiation ~~Health~~ [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621 ~~[if the licensee knows or has reason to believe that a sealed source has been ruptured]~~.

[(2)] The letter shall:

1. [(a)] Designate the well or other location;

2. [(b)] Describe the magnitude and extent of the escape of radioactive materials;

3. [(c)] Assess the consequences of the rupture; and

4. [(d)] Explain efforts planned or being taken to mitigate these consequences.

(2) [(3)] The licensee shall notify the Cabinet for ~~Health and Family Services~~ [Human Resources], Radiation ~~Health~~ [Control] Branch of the theft or loss of radioactive materials, radiation over-exposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39, and 40 and ~~902 KAR~~ 100:040, Section 15~~[18]~~.

(3) [(4)] If a sealed source or device containing radioactive material is lodged in a well and it becomes apparent that efforts to recover the sealed source will not be successful ~~[downhole]~~, the licensee shall:

(a) ~~[Monitor at the surface for the presence of radioactive contamination with a radiation survey instrument or logging tool during recovery operations; and~~

(b) Notify the Cabinet for ~~Health and Family Services~~ [Human Resources], Radiation ~~Health~~ [Control] Branch, immediately by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday ~~or [and]~~ at (800) 255-2587 ~~[(502)-564-8745]~~ at other hours of the circumstances that resulted in the inability to retrieve [if radioactive contamination is detected at the surface or if] the source [appears to be damaged;] and obtain cabinet approval to implement abandonment procedures; or

(b) That the licensee implemented abandonment before receiving cabinet approval because the licensee believed there was an immediate threat to public health and safety.

(4) [(5)] If it becomes apparent that efforts to recover the radioactive source shall not be successful, the licensee shall:

(a) Advise the well owner or well-operator of the requirements of this administrative regulation regarding abandonment and an appropriate method of abandonment, which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations [The setting of a whipstock or other deflection device]; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well, unless the mounting of the plaque is not practical;

(b) Either ensure that abandonment procedures are implemented within thirty (30) days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures [Notify the Cabinet for Human Resources, Radiation Control Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday and at (502) 564-8745 at other hours, giving the circumstances of the loss, and request approval of the proposed abandonment procedures]; and

(c) File a written report on the abandonment with the Manager, Radiation ~~Health~~ [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days after a sealed source has been classified as irretrievable. [of the abandonment] The report shall be sent to each appropriate state or federal agency that issued permits or approved of the drilling operation and [which] shall include [provides] the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and seal the source in place;

5. A brief description of the attempted recovery effort;

6 [5]. Depth of the radioactive source;

7 [6]. Depth of the top of the cement plug;

8 [7]. Depth of the well; ~~[and]~~

9 [8]. The immediate threat to public health and safety justification for implementing abandonment if prior cabinet approval was not obtained in accordance with subsection (6) of this section ~~[Section (27)(6)];~~

10. Information [Information] such as a warning statement, contained on the permanent identification plaque; and

11. State and federal agencies receiving a copy of this report.

(5) [(6)] If a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque mounted at the surface of [for posting] the well [or well-bore]. This plaque shall:

(a) Be constructed of long-lasting material, such as [for example,] stainless steel, brass, bronze, or Monel. The size of the plaque shall be at least [convenient for use on active or inactive wells, for example, a] seven (7) inch, seventeen (17) cm square and one-eighth (1/8) inch (3mm) thick. Letter size of the word "Caution" shall be approximately twice the letter size of the rest of the information, for example, one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and

(b) Contain the following engraved information on its face:

1. The word "Caution;"

2. The radiation symbol (color not required);

3. The date of abandonment;

4. The name of the well operator or well owner;

5. The well name and well identification number [number(s)] or other designation;

6. The sealed source [source(s)] by radionuclide[,] and quantity of activity;

7. The source depth[,] and the depth to the top of the plug;

8. An appropriate warning, depending on the specific circumstances of an abandonment, for example, "Do not drill below plug depth;" or "Do not enlarge casing;" and

9. The words "Do not reenter hole before contacting Radiation ~~Health~~ [Control] Branch, Kentucky Cabinet for ~~Health and Family Services~~ [Human Resources]."

(6) [(7)] If the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source, the licensee shall:

(a) Immediately notify the Cabinet for ~~Health and Family Services~~ [Human Resources], Radiation ~~Health~~ [Control] Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m. Monday through Friday ~~or [and]~~ at (800) 255-2587 ~~[(502)-564-8745]~~ at other hours; and

(b) Confirm by ~~[by confirming]~~ letter, within thirty (30) days, to the Manager, Radiation ~~Health~~ [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621 ~~[if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source].~~

(7) [(8)] The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate consequences.

Section 28 [24]. Minimum Training Requirements for Logging Supervisors. Logging supervisors shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety:

(a) Characteristics of gamma, neutron, and x-radiation;

(b) Units of radiation dose (mrem);

(c) Quantity of radioactivity (curie);

(d) Significance of radiation dose:

1. Radiation protection standards; and

2. Biological effects of radiation dose;

(e) Levels of radiation from sources of radiation;

(f) Methods of controlling radiation dose:

1. Working time;

2. Working distance; and

3. Shielding; and

(g) Radiation safety practices including prevention of contamination and methods of decontamination;

(2) Radiation detection instrumentation to be used:

(a) Use of radiation survey instruments:

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1. Operation;
2. Calibration; and
3. Limitations;
- (b) Survey techniques; and
- (c) Use of personnel monitoring equipment;
- (3) Equipment to be used:
- (a) Remote handling equipment;
- (b) Sources of radiation;
- (c) Storage and transport containers; and
- (d) Operation and control of equipment;
- (4) The requirements of 10 C.F.R. [C.F.R.] Part 39 and 902 KAR Chapter 100;
- (5) The licensee's or registrant's written operating and emergency procedures;
- (6) The licensee's or registrant's recordkeeping procedures; and
- (7) Case histories of well logging accidents.

Section 29 [25]. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "USASI N5.10-1968, Classification of Sealed Radioactive Sources", edition 1968; and

(b) "ANSI/HPS N43.6-1997, "Sealed Radioactive Sources – Classification", edition 1997. [American National Standard N542, "Sealed Radioactive Sources, Classification", ANSI N542-1977, Revision of N5.10-1968, (July 1978), is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m. [A copy of the "Sealed Radioactive Sources, Classification" may be viewed or obtained at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.]

STEVE DAVIS, MD, Acting Commissioner

For JANIE MILLER, Secretary

APPROVED BY AGENCY: September 14, 2011

FILED WITH LRC: September 14, 2011 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 Developmental Health, Developmental and Intellectual Disabilities Division of Behavioral Health

(As Amended at ARRS, October 11 and November 7, 2011)

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs.

RELATES TO: KRS 189A.010, 189A.040, 189A.045, 189A.070, 222.003, 222.005, 222.221, 222.231, 222.271, ~~and~~ 222.990

STATUTORY AUTHORITY: KRS 189A.040(6), 194A.030(5), 194A.050(1), ~~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 Behavioral Health, Developmental and Intellectual Disabilities] [Mental Health and Mental Retardation] [within the cabinet.]~~ KRS 189A.040(6) requires the Cabinet to promulgate administrative regulations to prescribe standards for the licensing and operation of the alcohol or substance abuse~~[and other drug]~~ education and treatment facilities and programs that provide assessment, education, and treatment services to offenders convicted of driving under the influence pursuant to KRS 189A.010. This administrative regulation establishes certification requirements and minimum standards for an individual or other entity operating a DUI program.

Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent College Handbook published by College Board Publications, P.O. Box 886, New York, New York 10023-0886.

(2) "Affidavit of indigency" is defined by~~[in]~~ KRS 31.120(3)~~[31.120(6)]~~.

(3) "Alcohol and other drug-free work place" means a program's policy to:

(a) Prohibit the unlawful manufacture, distribution, possession, or use of a controlled substance; and

(b) [to] Establish the disciplinary action to be taken if the policy is violated.

(4) "Assessment" means a procedure administered to an individual convicted of DUI that includes the administration of the PC-based or the online Kentucky DUI ~~[a computerized]~~ Assessment Instrument, a clinical interview, a determination by the assessor of a client's needs, a discussion of available options, and referral to services that provide an appropriate level of care in relation to the client's needs.

(5) "Cabinet" is defined by~~[in]~~ KRS 222.005(4)~~[222.005(3)]~~ and means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) "Case coordination" means the monitoring of a client's progress, including consultation with other service providers and the court, to ensure the coordination of a client's services from assessment to completion~~[, and which was formerly referred to as case management]~~.

(7) "Certification" means the process by which the division recognizes and authorizes a program, assessor, or instructor to provide services to a client convicted of DUI.

(8) "Certified alcohol and drug counselor" is defined by~~[in]~~ KRS 309.080(2).

(9) "Certified assessor" means an individual who has been trained and approved by the division to evaluate the needs of a client and to recommend appropriate services by conducting assessments in a DUI program.

(10) "Certified instructor" means an individual who has been trained and approved by the division to provide education services in a DUI program.

(11) "Certified program" means a public or private entity approved by the division to deliver assessment, education, or treatment services to a client convicted of DUI.

(12) "Client" means an individual who receives services in a DUI program.

(13) "Clinical services supervisor" means an individual responsible for monitoring and directing assessment and treatment services and providing consultation and instruction to clinical staff.

(14) "Conflict of interest" means a private relationship exists between a client and a program~~[,]~~ that will result in:

(a) A conflict between the program's interests and the interests of the client; [,] or

(b) A situation in which [will be created where] a program's personal or financial interest conflicts with professional responsibility.

(15) "Court" means the court in which the client was convicted of DUI.

(16) "Courtney disposition system" means a statewide database maintained by the Kentucky Administrative Office of the Courts that contains criminal conviction data from both state and local law enforcement agencies in Kentucky.

(17) "Detoxification" means a twenty-four (24) hour medical or nonmedical program providing:

(a) Supervised management of physical and psychological

withdrawal symptoms from a substance to which an individual has been addicted or abusing; and

(b) An assessment of the individual's need for further care or referral to appropriate resources.

~~(18) ["Diagnostic and Statistical Manual of Mental Disorders (DSM)" is published by the American Psychiatric Association and provides a common language and standard criteria for the classification of mental disorders.~~

~~(19)~~ "Division" means the Division of Behavioral Health, [Substance Abuse,] Department for Behavioral Health, Developmental and Intellectual Disabilities, [Mental Health and Mental Retardation Services,] Cabinet for Health and Family Services, 100 Fair Oaks Lane, 4E-D, Frankfort, Kentucky 40621-0001.

~~(19)~~~~(20)~~~~(19)~~ "DUI" means driving under the influence of alcohol or other drugs in violation of KRS 189A.010.

~~(20)~~~~(21)~~~~(20)~~ "DUI services" means assessment, education, or treatment services provided to a client convicted pursuant to KRS 189A.010.

~~(21)~~~~(22)~~~~(21)~~ "Education" means a curriculum approved by the division that provides information about the risks of alcohol and other drugs.

~~(22)~~~~(23)~~~~(22)~~ "Education agreement" means a written plan outlining what a client referred for education is required to complete to satisfy the program's requirements.

~~(23)~~~~(24)~~~~(23)~~ "Enrollment" means the act of registering at a certified DUI program and receiving an assessment.

~~(24)~~~~(25)~~~~(24)~~ "Facility" means the physical area including the grounds and building in which a program delivers services.

~~(25)~~~~(26)~~~~(25)~~ "Fee agreement" means a written statement of charges to a client for services delivered by a program that specifies the arrangements for payment of the fees.

~~(26)~~~~(27)~~~~(26)~~ "First offender" means a person who was convicted of a first offense under KRS 189A.010(5)(a) [189A.010(4)(a)].

~~(27)~~~~(28)~~~~(27)~~ "Immediate danger" means a condition in the program which could or has caused death or serious physical injury.

~~(28)~~~~(29)~~~~(28)~~ "Indigent person" is defined by [in] KRS 31.100(3).

~~(29)~~~~(30)~~~~(29)~~ "Inpatient" means a hospital-based residential service provided postwithdrawal, to an individual with a primary or secondary diagnosis of alcohol or other drug abuse or dependency that is designed to reduce or eliminate alcohol or other drug abuse behavior and dependency.

~~(30)~~~~(31)~~~~(30)~~ "Intensive outpatient" means a structured comprehensive program of individual and group therapeutic activities delivered in a nonresidential setting, where a client is assisted in recovery from alcohol or other drug abuse on a scheduled and intense basis.

~~(31)~~~~(32)~~~~(31)~~ "Location code" means a six (6) digit number issued by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration to each of a program's facilities.

~~(32)~~~~(33)~~~~(32)~~ "Means test" means an objective method used by a program to determine a client's income and resources to evaluate his or her ability to pay for services received.

~~(33)~~~~(34)~~~~(33)~~ "Memorandum of understanding" means a written agreement between two (2) programs that outlines the duties and responsibilities of a program regarding a client referral that remains in effect until one (1) of the programs terminates the agreement in writing.

~~(34)~~~~(35)~~~~(34)~~ "Multiple offender" means a person who was convicted of a second, third or subsequent offense under KRS 189A.010.

~~(35)~~~~(36)~~~~(35)~~ "Off the grounds" means a facility is separated

from another facility by a public road.

~~(36)~~~~(37)~~~~(36)~~ "Outpatient" means individual and group therapeutic activities assisting a client in recovery from alcohol or other drug abuse, provided in a nonresidential setting on a scheduled and unscheduled basis.

~~(37)~~~~(38)~~~~(37)~~ "Plan of correction" means a program's written plan, including the planned correction and a date when a correction will be made, that is submitted to the division by a program if deficiencies are cited by the division in a program review.

~~(38)~~~~(39)~~~~(38)~~ "Program administrator" means an individual, or the designee of the individual, in charge of the operation of a program who is responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes the required services.

~~(39)~~~~(40)~~~~(39)~~ "Program code" means an alphanumeric identifier that is issued to a program by the division at the time a program is certified.

~~(40)~~~~(41)~~~~(40)~~ "Progress note" means a written entry in a client's record to document client contacts, the delivery of services, and how the goals of a client's treatment plan are being addressed.

~~(41)~~~~(42)~~~~(41)~~ "Regional program manager" means an individual responsible for the management of a program's county offices if a program operating statewide has multiple county locations.

~~(42) "Residential" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.~~

~~(43)~~~~(42)~~ "Residential transitional living" means a therapeutic group setting, in which:

~~(a)~~~~[where]~~ Counseling is provided either on site by staff or off site; and

~~(b)~~~~[where]~~ A client:

1. Resides twenty-four (24) hours a day; and

2. Makes a social and vocational adjustment prior to returning to family or independent living in the community.

~~(44)~~~~(43)~~ ["Residential" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.

~~(45)~~~~(44)~~ "Revocation" means withdrawal by the division of a program's or an individual's right to deliver services to a client convicted of DUI.

~~(45)~~~~(46)~~~~(45)~~ "Self-help group" means activities provided in a self-directed peer group setting, for a person recovering from alcohol or other drug abuse or the effects of another person's alcohol or other drug abuse, in which [where] support and direction in achieving or maintaining an alcohol and drug-free lifestyle or in learning to cope with a problem related to another person's alcohol or other drug abuse is provided.

~~(46)~~~~(47)~~~~(46)~~ "Sliding fee scale" means a program's formula for providing a service to a client at a rate lower than the program's maximum published fee.

~~(47)~~~~(48)~~~~(47)~~ "Treatment" is defined by [in] KRS 222.005(14) [222.005(13)].

~~(48)~~~~(49)~~~~(48)~~ "Treatment plan" means the written product of the process by which a client and a clinician identify and rank a client's problems needing resolution, establish agreed-upon immediate and long-term specific and measurable goals, and decide on a treatment process and the resources to be utilized.

~~(49)~~~~(50)~~~~(49)~~ "Twenty (20) hour education" means an education curriculum:

(a) For first offenders assessed as low risk, that do not have an alcohol or other drug problem requiring treatment; or

(b) As a supplement to treatment for a first or multiple offender

assessed as needing treatment.

(50)(61)(50) "Uniform citation" is defined by(in) KRS 431.450.

Section 2. Licensing Requirements. (1) An individual or other entity shall not provide DUI assessment, education, or treatment services unless the service is in a program or facility:

(a) Licensed by the cabinet in accordance with 908 KAR 1:370;

(b) Conducted in a licensed federal hospital subject to federal licensure and regulatory requirements pursuant to 38 U.S.C. 301, 38 U.S.C. 1720(a)(4720A), 38 U.S.C. 7333, or 38 U.S.C. 7334; or

(c) Conducted on the grounds of a hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180.

(2) A hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180 that operates a DUI program in a facility off the grounds of the hospital shall have the separate facility in which the(where a) DUI program is located licensed by the cabinet in accordance with subsection (1) of this section.

(3) A DUI program established, conducted, and maintained in a jail, prison, or correctional facility shall be licensed by the cabinet in accordance with subsection (1) of this section.

Section 3. Program Certification Requirements. (1) General requirements.

(a) A licensed entity desiring to provide DUI assessment or education services shall be certified by the division as a DUI program before providing a service at any location.

(b) A certified DUI program may deliver assessment, education, or treatment services statewide if the program is:

1. Licensed in accordance with Section 2 of this administrative regulation; and

2. is Certified by the division at each service location.

(c) A program may be certified to provide only assessment or only education services or both assessment and education services at a location.

(d) The division shall not certify a program desiring to provide only education at all locations.

(e) A treatment program or facility licensed by the cabinet to provide treatment pursuant to 902 KAR 20:160, 902 KAR 20:180, or 908 KAR 1:370, an out-of-state treatment facility licensed by the state where the facility is located, or a federally-licensed hospital may provide treatment services to a client referred by a certified DUI program without receiving DUI program certification from the division.

(f) The division shall notify a program, in writing, if certification is issued, renewed, or revoked.

(g) The division shall notify the Transportation Cabinet, in writing, if an action is taken to revoke a DUI program's certification or if an action by the division is appealed by a program.

(h) If more than one (1) certified DUI program is operated at the same location, each program shall maintain a separate organizational identity by:

1. Conspicuously posting in a public area:

- a. Each program's license;
- b. Each program's DUI Program Certification Certificate; and
- c. A sign showing the name of each program;

2. Using a separate logo or letterhead on written materials;

3. Maintaining client records in a separate and secure cabinet; and

4. Conducting DUI services separate from another DUI program located at the same location.

(i) A certified DUI program shall conspicuously post, in a public area of each facility where DUI services are delivered by the program, its license and DUI Program Certification Certificate.

(j) A certified DUI program shall:

1. Deliver education and treatment services in a facility that provides at least seven (7) square feet of individual space for a client while ~~he is~~ receiving a service;

2. Maintain an alcohol and other drug-free work place;

3. Obtain a criminal background check from the Administrative Office of the Court's Courtnet Disposition System for the administrator, and all clinical or(and) certified staff, that begin working in the program after April 12, 2000(the effective date of this administrative regulation);

4. Ensure that an owner, program administrator, and all clinical or(and) certified staff that begin working in a program after April 12, 2000(the effective date of this administrative regulation) have not been released from incarceration or probation or parole for the conviction of a violent crime, hate crime, or sex crime within two (2) years from his or her date of employment with the program; and

5. Maintain professional malpractice insurance to cover all clinical or(and) certified staff in the minimum amount of \$100,000 per occurrence.

(2) Staffing requirements.

(a) General requirements.

1. A program shall have staff certified by the division in accordance with Section 4 of this administrative regulation to deliver assessment and education services.

2. Certified, clinical or administrative staff shall not currently be employed as:

a. A law enforcement officer;

b. A correctional officer, other than in a certified DUI program that is located in a jail, prison or correctional facility;

c. A probation and parole officer;

d. An attorney;

e. An employee of the Administrative Office of the Courts;

f. An employee of the division; or

g. A judge.

(b) Program administrator.

1. A program administrator shall be responsible for the services delivered in a program and knowledgeable of:

a. The requirements established in this administrative regulation, and KRS 189A.040 and 189A.045;

b. In a federally assisted program, the requirements for confidentiality established in 908 KAR 1:320; and

c. In a nonfederally assisted program, the requirements for confidentiality established in KRS 222.271(1).

2. A program administrator shall ensure:

a. A program implements and complies with all applicable administrative regulations and statutes;

b. Staff having primary responsibility for delivering DUI services, including regional program managers, comply with:

(i) The requirements established in this administrative regulation, and KRS 189A.040 and 189A.045;

(ii) In a federally assisted program, the requirements for confidentiality established in 908 KAR 1:320; and

(iii) In a nonfederally assisted program, the requirements for confidentiality established in KRS 222.271(1);

c. An individual involved in the operation of the program or in the delivery of client services engages in ethical practices and abides by the Code of Ethics contained on the Application for DUI Program Certification or the Application for DUI Program Recertification, whichever is applicable;

d. A program shall not accept a client if a conflict of interest exists between the program and the client;

e. Staff providing assessment and education services are certified by the division and that they complete training required by the division; and

- f. Attendance by a client is documented in the client's record.
- 3. A program administrator shall:
 - a. Investigate a complaint received from the division and shall, upon request, provide the division with records pertaining to the complaint; ~~and~~
 - b. Personally attend, or have a representative of ~~the~~his program attend, at least one (1) statewide DUI meeting annually. The division shall conduct statewide DUI meetings on a semiannual basis; ~~and~~;
 - c. Maintain a written record of quarterly face to face meetings with the clinical services supervisor to document review of the clinical supervision notes.
- (c) Clinical services supervisor. There shall be clinical supervision provided at all locations by a clinical services supervisor who meets the requirements established in paragraph (d) or (f) of this subsection.
- (d) Except as provided in paragraph (f) of this subsection, the clinical services supervisor shall be:
 - 1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, who has 4,000~~4000~~ hours of clinical work experience postcertification; or
 - 2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (e) of this subsection:
 - a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;
 - d. Certified psychologist with autonomous functioning certified to function without supervision~~;~~ in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;
 - e. Certified psychologist~~;~~ with 6,000~~6000~~ hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.056;
 - f. Psychological associate with 6,000~~6000~~ hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.064;
 - g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;
 - h. Certified social worker with 6,000~~6000~~ hours of postcertification clinical practice in psychiatric social work licensed by the Kentucky Board of Social Work in accordance with KRS 335.080;
 - i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6,000~~6000~~ hours of clinical experience in psychiatric nursing;
 - j. Registered nurse who:
- (i) Is licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university;
- (ii) ~~who~~ Is certified as a psychiatric and mental health nurse by

- the American Nurses Association; and
- (iii) ~~who~~ Has 6,000~~6000~~ hours of clinical experience in psychiatric nursing;
- k. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS 335.330~~[Chapter 335]~~;
- l. Licensed professional clinical counselor ~~licensed~~Certified professional counselor ~~certified~~ by the Kentucky Board of Licensed~~[Certification for]~~ Professional Counselors in accordance with the provisions of KRS 335.525(1)~~[Chapter 335]~~; or
- m. Licensed~~[Certified]~~ professional art therapist licensed~~[certified]~~ by the Kentucky Board of Licensure~~[Certification]~~ for Professional Art Therapists in accordance with the provisions of KRS 309.130.
- (e) A certified or licensed professional meeting the requirements established in paragraph (d)2 of this subsection shall have:
 - 1. Completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinical services supervisor in a DUI program or within two (2) years immediately after assuming responsibility as a clinical services supervisor in a DUI program; and
 - 2. 4,000~~4000~~ hours of work experience in the alcohol and other drug treatment field postdegree.
- (f) A person shall qualify as a clinical services supervisor under this administrative regulation if, on April 12, 2000~~[the effective date of this administrative regulation]~~, the person:
 - 1. Met the requirements for clinical services supervisor as established in 908 KAR 1:050 and 908 KAR 1:190;
 - 2. Had been a clinical services supervisor for at least five (5) years; and
 - 3. Was employed as a clinical services supervisor in a DUI program certified by the division.
- (g) A clinical services supervisor shall complete:
 - 1. A division approved twelve (12) hour training in clinical supervision, within six (6) months of assuming responsibility as the clinical services supervisor in a DUI program~~;~~ or within one (1) year of the effective date of this administrative regulation, whichever is later; and
 - 2. Twenty (20) hours of training in alcohol and other drug abuse treatment annually.
- (h) A clinical services supervisor shall:
 - 1. Assist a program administrator in the investigation of a complaint against a program if a complaint concerns an assessment, education, or treatment service;
 - 2. ~~(4)~~ Provide clinical supervision to no more than six (6) staff delivering assessment and treatment services to clients convicted of DUI; and
 - 3. ~~(4)~~ Maintain clinical supervision notes to document each supervisory session including the length of the session, content of the session, all observations of assessment and treatment services, and recommendations for improvement of knowledge base and facilitation skills.
- (3) Application for program certification.
 - (a) An individual or other entity seeking DUI program certification shall:
 - 1. Submit a completed Application for DUI Program Certification to the division;
 - 2. Submit a Program Survey Form for each location where the applicant desires to provide DUI assessment, education or treatment services and all documentation required by the division; and
 - 3. Sign the application, with his or her signature certifying compliance with:
 - a. The Code of Ethics contained on the Application for DUI

Program Certification;

b. The requirements established in this administrative regulation, and KRS 189A.040, and 189A.045; and

c. The requirements for confidentiality established in:

(i) 908 KAR 1:320 for a federally-assisted program; or

(ii) KRS 222.271(1) for a nonfederally-assisted program.

(b) A Program Survey Form shall be completed for each location:

1. At the time of application for program certification or recertification; or

2. If a program opens a new location.

(c) A Program Survey Form shall contain the:

1. Type of services provided;

2. Maximum fee for a service;

3. Name of the curriculum delivered at the location;

4. Name and telephone number of the contact person for the location;

5. Hours of operation when an office is staffed;

6. Address of the office where the client files for the location are maintained and stored;

7. Name and title of each certified staff person providing assessment or education services at the location; and

8. Name of the clinical services supervisor for the location.

(d) The division shall review an application, verify the information, and certify a program if the program:

1. Submits a completed Application for DUI Program Certification to the division;

2. Is a licensed entity in accordance with Section 2 of this administrative regulation; and

3. Has staff certified by the division to deliver the required services.

(e) The division shall assign a program code and issue a letter and DUI Program Certification Certificate if a program is certified. The program code shall be used for verification of program certification on correspondence to the court, the Transportation Cabinet, and the division.

(f) Each program location shall have an additional location code issued by the division that shall be used in conjunction with a program code to identify a program and the exact location where a service is delivered.

(g) Program certification shall be issued by the division for a period of two (2) years, and shall be renewable unless previously revoked.

(h) Program certification shall not be transferred and shall apply to the individual or other entity named in the Application for DUI Program Certification or the Application for DUI Program Recertification, whichever is applicable, approved by the division.

(i) If there is a change of ownership, the new owner shall apply for program certification in accordance with the requirements established in this subsection.

(4) Application for DUI program recertification.

(a) A program administrator shall request program recertification on a completed Application for DUI Program Recertification at least thirty (30) calendar days prior to the expiration of the[his] program's certification.

(b) If program certification expires, a program administrator shall submit a completed Application for DUI Program Recertification within sixty (60) calendar days of the expiration date. The program shall be considered a new applicant if the Application for DUI Program Recertification is not made within sixty (60) calendar days of the expiration date.

(c) If program certification lapses for sixty (60) calendar days or more, the division shall notify a program administrator, in writing, that the program is not eligible to deliver DUI services and the pro-

gram shall:

1. Notify active clients in writing;

2. Refer a client and transfer case coordination responsibility of a client's case to a program of the client's[his] choice; and

3. Submit to the division a list of active clients with a copy of each client's referral form stating the name of the program to which each client was[a client is] referred.

(d) A program administrator shall meet the requirements established in paragraph (a)[subsection—(2)(b)3b] of this subsection[section] before a program is recertified.

(5) Denial of program certification and recertification. The division shall deny a program's application for certification or recertification if:

(a) A program fails to meet certification requirements;

(b) Program certification has been denied or revoked by the division within the last three (3) years;

(c) A current owner, program administrator, clinical services supervisor, or other principal had his or her assessor, [or] instructor, or program administrator certification revoked by the division within the last three (3) years; or

(d) The division is in the administrative hearing process to revoke the assessor, [or] instructor, or program administrator certification of a current owner, program administrator, or clinical services supervisor.

(6) Program changes.

(a) A program administrator shall notify the division and the cabinet, in writing, if there is a change in ownership, program name, or program location.

(b) A program administrator shall notify the division, in writing, on a Report of Change Form if there is a change at a location in:

1. Services delivered;

2. Maximum fee charged for a service;

3. Hours of operation when an office is staffed;

4. Location of client records;

5. Scheduling telephone number;

6. Contact person;

7. Clinical services supervisor; or

8. Other program information printed in the DUI directory.

(7) Records.

(a) General requirements.

1. A program shall designate on a Program Survey Form, at the time of application for program certification, where the client records for each location and the administrative records for the program will be maintained and stored.

2. A program administrator shall notify the division, in writing, on a Report of Change Form, if the program changes the location where client or administrative records are maintained and stored.

3. A program administrator shall ensure that written and electronic client and administrative records are:

a. Stored in a locked cabinet or computer only accessible to authorized staff;

b. Kept confidential:

(i) In a federally assisted program pursuant to 908 KAR 1:320; or[and]

(ii) In a nonfederally assisted program pursuant to KRS 222.271(1);

c. Retained for at least five (5) years from the last date of service or action taken; and

d. If destroyed after a five (5) year period of retention, either burned, shredded or deleted electronically in a manner that is unrecoverable.

4. A program shall maintain a record of fees paid by a client.

(b) Administrative records. A program shall maintain administrative records that include:

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1. Policy and procedure manual;
 2. Copies of curricula, handouts, and videos;
 3. Hours of operation for each location;
 4. Fee schedule and means test for determining indigency;
 5. Cabinet report from most recent licensure inspection;
 6. Memoranda of understanding;
 7. Copies of the division's certification letters for assessors, ~~and~~ instructors, ~~and~~ program administrators on staff;
 8. Complaint file; ~~and~~
 9. Assessment, education, and treatment rosters or sign in sheets; ~~and~~
 10. Clinical supervision notes.
- (c) Client records.
1. A program shall release a client's record or disclose confidential information about the client in accordance with the client's written permission through a signed authorization for release of information.
 2. A program shall release a client's record, with the client's written authorization for release of information, if:
 - a. The division or its designee requests~~request~~~~s~~ release of a record; or
 - b. A client is referred to another program for education or treatment services.
 3. A program shall release a client's record upon receipt of a court order.
 4. A program shall open a separate written or electronic record for a client at the time of assessment, or upon enrollment in education or admission to treatment, if the client is referred to another program after receiving an assessment.
 5. Client records shall include the following forms developed by the program and signed by the client:
 - a. Client rights statement;
 - b. Client notice of confidentiality and confidentiality agreement;
 - c. Fee agreement;
 - d. Authorization for release or disclosure of information; and
 - e. As applicable, the information required by subparagraphs 6, 7, or 8 of this paragraph.
 6. If a client receives an assessment, his or her record shall include:
 - a. The items required by subparagraph 5 of this paragraph;
 - b. An AOC 494 form (Notice to Attend Alcohol Driver Education Program) or a court order;
 - c. Uniform citation;
 - d. Kentucky DUI Assessment Instrument printout;
 - e. Clinical interview and interview notes;
 - f. Freedom of choice statement;
 - g. Confirmation and acceptance of assessment statement;
 - h. Referral agreement, if applicable;
 - i. Certificate of enrollment;
 - j. Case coordination contacts; and
 - k. Certificate of completion or notice of noncompliance.
 7. If a client receives education, his or her record shall include:
 - a. The items required by subparagraph 5 of this paragraph;
 - b. An education agreement signed by the client; and
 - c. A record of attendance.
 8. If a client receives treatment, his or her record shall include:
 - a. The items required by subparagraph 5 of this paragraph;
 - b. A treatment plan signed by the client and the~~his~~ clinician and treatment plan reviews signed by the~~his~~ clinician;
 - c. Progress notes signed and dated by the~~his~~ clinician, recorded after each client contact documenting the type of contact or service provided, and the client's participation; and
 - d. A discharge summary documenting completion or noncompliance signed and dated by the~~his~~ clinician.

(8) Fees.

~~[(a)]~~ The fee for assessment, education, or treatment shall be established by a program and paid by a client pursuant to KRS 189A.040 in accordance with this subsection.~~[the following:]~~

~~(a) [(i)]~~ A fee for assessment shall include all fees associated with screening, intake, clinical interview, client transfers, monitoring of client progress, and all other case coordination activities including exit or discharge interviews.~~[:]~~

~~(b) [(ii)]~~ A fee for education shall include only those costs associated with the delivery of the Prime for Life Risk Reduction Program (PRL) [a] Twenty (20) Hour Curriculum [approved by the Division] including any cost for participant manuals.[:]

~~(c) [(iii)]~~ A fee for treatment shall:

1. Include ~~[only]~~ those costs involved in delivering individual or group counseling and ~~[shall also include]~~ the fee for treatment plan reviews; ~~and~~

2. ~~[: but shall]~~ Not include a separate fee for case coordination activities.~~[: and]~~

~~(d) [(iv)]~~ A DUI program shall not charge a fee for group outpatient sessions not attended.

~~(e) [(v)]~~ The fee schedule published in the DUI directory shall be posted in a public area of each facility visible to a client.

~~(f) [(vi)]~~ The fee a client is charged shall not exceed a program's maximum published fee.

~~(g) [(vii)]~~ A program shall explain the program's fee and payment requirements to the client at the time of the~~his~~ assessment or upon enrollment in education or admission to treatment, if the client is referred to another program after receiving an assessment.

~~(h) [(viii)]~~ A program shall not charge a client a fee unless the client has signed a fee agreement.

~~(i) [(ix)]~~ A program's sliding fee scale shall be based on a means test and applied objectively to a client to determine a client's ability to pay.

~~(j) [(x)]~~ If a client states that he or she is an indigent person, a program shall refer the client~~him~~ to the court to have an affidavit of indigency executed by the court. A program shall:

1. Accept a client determined indigent by the court; and
2. Deliver services free of charge or for the amount specified by the court.

(9) DUI directory.

(a) The division shall:

1. Publish annually on July 1~~[:]~~ of each year~~[:]~~ a directory of all certified DUI programs; and
2. Issue additions, revisions, and corrections quarterly on October 1, January 1, and April 1, of each year as changes occur.

(b) The directory shall include DUI programs certified to provide DUI assessments and shall be distributed ~~[to:]~~ upon request to the following:

1. District court judges;
2. Circuit clerks;
3. Certified DUI programs; and
4. The public ~~[upon request]~~.

(c) The directory shall have a county section that includes:

1. The location of each program having an assessment center in a county;
2. The services provided at each program location;
3. The maximum fee for a service; and
4. Specific terms and conditions related to DUI services that are required by a program.

(d) A program administrator shall report changes for the directory to the division, on a Report of Change Form, at least thirty (30) calendar days prior to the publication dates established in paragraph (a) of this subsection. If the division does not receive a Report of Change Form by the deadline date, the division shall hold a

change until the next scheduled publication of the directory.

Section 4. Assessor, ~~and~~ Instructor, ~~and~~ Program Administrator Certification Requirements. (1) General requirements.

(a) Only an individual holding valid certification from the division shall provide DUI assessment or education services. An individual certified by the division shall not provide DUI assessment or education services except in a program that is certified by the division.

(b) An individual desiring to provide assessment ~~or~~, program administration, or education services shall apply for certification to the division. To be certified, an individual shall:

1. Meet the requirements for certification established in this section; and

2. Complete the training required by subsection (3) of this section.

(c) 1. Certification for an assessor, program administrator, or instructor shall be for a period of five (5) years from the date of an individual's initial certification as an assessor, program administrator, or instructor.

2. An assessor, program administrator, or instructor shall renew his or her certification in accordance with subsection (4) of this section every five (5) years.

3. Certification that is not renewed or revoked prior to the end of the five (5) year period shall automatically expire at the end of that time period.

(2) Credentials for assessors, program administrators, and instructors.

(a) Assessors. An individual desiring certification as an assessor shall complete twenty (20) hours of training in alcohol and other drug abuse counseling annually and, except as provided in paragraph (c) of this subsection, shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089;

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (b) of this subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

f. Psychological associate certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker certified by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in nursing from an accredited college or university;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:

(i) Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2,000~~[2000]~~ hours of clinical work experience in the substance abuse or mental health field;

(ii) Diploma graduate in nursing from a three (3) year program and 4,000~~[4000]~~ hours of clinical work experience in the substance abuse or mental health field; or

(iii) Associate degree in nursing from a two (2) year program from an accredited college or university and 6,000~~[6000]~~ hours of clinical work experience in the substance abuse or mental health field;

k. Advanced practice registered nurse ~~[practitioner]~~ licensed by the Kentucky Board of Nursing in accordance with KRS 314.042;

l. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS 335.330~~[Chapter 335]~~;

m. Licensed professional clinical counselor ~~licensed~~~~[Certified professional counselor certified]~~ by the Kentucky Board of Licensed~~[Certification for]~~ Professional Counselors in accordance with the provisions of KRS 335.525(1)~~[Chapter 335]~~; or

n. Licensed~~[Certified]~~ professional art therapist li-~~censed~~~~[certified]~~ by the Kentucky Board of Licensure~~[Certification]~~ for Professional Art Therapists in accordance with the provisions of KRS 309.130; or

3. An individual who will meet the requirements of a licensed or certified professional established in subparagraph 1 or 2 of this paragraph within three (3) years of the date of his or her application for certification as a DUI assessor ~~[or the effective date of this administrative regulation, whichever is later,]~~ and who has:

a. A masters degree from an accredited college or university in a program that required completion of a clinical practicum; or

b. A bachelors degree or greater from an accredited college or university, plus one (1) year full-time supervised clinical work experience in the licensed treatment program where the individual is currently employed.

(b) A certified or licensed professional meeting the requirements established in paragraph (a)2 of this subsection shall have completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of his or her application for DUI assessor certification.

(c) A person shall qualify as a DUI assessor under this administrative regulation if, on April 12, 2000~~[the effective date of this administrative regulation]~~, the person:

1. Met the requirements for a certified DUI assessor established in this administrative regulation as those requirements existed on January 1, 2000;

2. Had been a certified DUI assessor for at least five (5) years; and

3. Was employed as a certified assessor in a DUI program certified by the division.

(d) Instructors. An individual desiring certification as an instructor shall meet one (1) of the following requirements:

1. Have a bachelors degree or greater from an accredited college or university;

2. Have an associate degree from an accredited college or university, with 4,000~~[4000]~~ hours of supervised work experience in direct client services in the substance abuse field;

3. Have a high school diploma or a general education development equivalency certificate from a state board of education, with 8,000~~[8000]~~ hours of supervised work experience in direct client services in the substance abuse field;

4. Meet the requirements for a certified assessor established in paragraph (a) or (c) of this subsection; or

5. Meet the requirements for a clinical services supervisor established in Section 3(2)(d) or (f) of this administrative regulation.

(e) Program administrator.[:] An individual applying for certification as a program administrator shall meet one (1) or more of the following requirements:

1. Have a bachelors degree or greater from an accredited college or university with 2,000[2000] hours of work experience in the alcohol and other drug treatment field;

2. Have an associate degree from an accredited college or university with 4,000[4000] hours of supervised work experience in the direct client services in the alcohol and other drug treatment field;

3. Have a high school diploma or a general education development equivalency certificate from a state board of education with 8,000[8000] hours of supervised work experience in direct client services in the alcohol and other drug treatment field;

4. Meet the requirements for a certified DUI assessor established in paragraph (a) of this subsection; or

5. Be an individual who, on the effective date of this administrative regulation:

a. Had been a program administrator for at least five (5) years; and

b. Was employed as a program administrator in a DUI program certified by the division.

(3) Assessor, [and] instructor, and program administrator certification and recertification training.

(a) General training requirements.

1. Only training approved by the division shall suffice as acceptable training for DUI assessor, [or] instructor, and program administrator certification or recertification.

2. An individual desiring certification or recertification as an assessor, [or] instructor, or program administrator shall submit a completed DUI Assessor Certification Application, DUI Assessor Recertification Application, DUI Instructor Certification Application, or DUI Instructor Recertification Application, DUI Program Administrator Certification Application, or DUI Program Administrator Recertification Application, whichever is applicable, to the division no later than the deadline date indicated on the training announcement issued by the division.

3. The application shall be accompanied by a copy of the following:

- a. Official transcripts;
- b. Diplomas;
- c. Certificates;
- d. Documentation of certification or licensure; and
- e. Documentation of work experience.

4. Assessor, [or] instructor, or program administrator certification or recertification shall not be issued by the division until the fee for training is paid in full.

5. If an individual making application for an assessor, [or] instructor, or program administrator certification or recertification training fails to meet the established requirements, the division shall deny the application and notify the applicant, in writing, of the reason for the denial.

6. Within thirty (30) calendar days after completion of an assessor, [or] instructor, or program administrator training, the division shall notify the program and the individual, in writing:

- a. That the individual has:
 - (i) Satisfactorily completed a training;
 - (ii) Met the requirements for certification or recertification; and
 - (iii) Been certified or recertified; or
- b.(i) Of an observed deficiency as it relates to assessor, [or]

instructor, or program administrator certification; and

(ii) The reason for withholding certification or recertification, [:] and

~~(iii) The required corrective plan of action.]~~

(b) Training requirements for assessors. An individual desiring certification as an assessor who has the necessary education and work experience shall ~~[successfully complete the following requirements]:~~

1. Attend and participate in all sessions of an assessor certification training offered by the division;

2. Obtain an overall score of eighty (80) percent or better on performance in each of the following areas:

- a. A written posttest on general course content;
- b. A written posttest on the Kentucky DUI Assessment Instrument; and
- c. A demonstration of ability to make an appropriate client referral based on a written case study;

3. Receive a written recommendation from both the trainer and the division representative; and

4. Sign the application, with his or her signature certifying compliance with:

- a. The Code of Ethics contained on the application; and
- b. The requirements established in this administrative regulation.

(c) Training requirements for instructors. An individual desiring certification as an instructor who has the necessary education and work experience shall ~~[successfully complete the following training requirements]:~~

1. Attend and participate in all sessions of a division approved instructor certification training;

2. Complete training ~~[in one (1) or more of] in the Prime for Life Risk Reduction Program (PRI) Twenty (20) Hour Curriculum [curricula]~~ approved by the division;

3. Obtain a score of eighty (80) percent or better on a written posttest;

4. Demonstrate ability to make an oral presentation of assigned material;

5. Receive a written recommendation from both the trainer and the division representative; and

6. Sign the application, with his or her signature certifying compliance with:

- a. The Code of Ethics contained on the application; and
- b. The requirements established in this administrative regulation.

(d) Training requirements for program administrator certification. An individual applying for initial certification as a program administrator, who has the necessary education and work experience in accordance with [the] subsection (2)(e)[(2)-(a)] of this section, shall [successfully complete the following requirements]:

1. Sign the application, with his or her signature in the Applicant's Statement portion certifying compliance with:

- a. The Code of Ethics contained on the application; and
- b. The requirements established in this administrative regulation; and [an Applicant's Statement signifying compliance with the requirements contained on the form, which includes a Code of Ethics, contained in the Application for DUI Program Certification, signifying compliance with the requirements in this administrative regulation; and]

2. Complete six (6) hours of [hour] training conducted by the division within one (1) year of signing the Applicant's Statement.

(4) Assessor, [and] instructor, and program administrator recertification.

(a) An individual desiring recertification as an assessor shall:

1. Meet the requirements for a DUI assessor established in

subsection (2)(a) or (c) of this section, on the date of his or her application for assessor recertification; and

2. Submit to the division a DUI Assessor Recertification Application and the other forms required by subsection (3)(a)3. of this section~~[other required forms]~~ by October 1 of the calendar year in which his or her certification expires.

(b) An individual desiring recertification as an instructor shall:

1. Meet the requirements for a DUI instructor established in subsection (2)(d) of this section;

2. Submit to the division a DUI Instructor Recertification Application and the other forms required by subsection (3)(a)3. of this section~~[all other required forms]~~ by October 1 of the calendar year in which his or her certification expires; and

3. Complete a training authorized by the division.

(c) An individual desiring recertification as a program administrator shall:

1. Meet the education, work experience, and credentialing requirements in accordance with subsection (2)(e)[(2)–paragraph (e)] of this section; and

2. Submit to the division a completed DUI Program Administrator Recertification Application and the other forms required by subsection (3)(a)3. of this section~~[all other forms required;]~~ by October 1~~[;]~~ of the calendar year in which his or her certification expires.

(d) If an individual's assessor, ~~or~~ instructor, or program administrator certification lapses for sixty (60) days ~~[one (1) year]~~ or more, the individual's application for assessor, ~~or~~ instructor, or program administrator recertification shall be processed as a new application and the individual shall complete the requirements for initial certification established in subsections (2) and (3) of this section.

(e) If an individual does not meet the requirements for an assessor, ~~or~~ instructor, or program administrator at the time of his or her application for recertification:

1. The division shall deny the~~[his]~~ application for recertification and notify the individual and the program, in writing, of the reason for denial; and

2. The individual's currently held certification shall expire pursuant to subsection (1)(c)3 of this section.

(5) Revocation of assessor, [and] instructor, or[and] program administrator certification.

(a) The division shall revoke assessor, ~~or~~ instructor, or[and] program administrator certification if an individual:

1. Fails to comply with the requirements established in this administrative regulation;

2. Violates the Code of Ethics contained on the application for assessor, ~~or~~ instructor, or program administrator certification;

3. Is convicted while holding certification from the division of a violent crime, hate crime, or sex crime; ~~or~~

4. Falsifies information on an application for DUI certification or recertification; or

5. Engages in [inappropriate] behavior that would lead the division to determine that the safety of a client is threatened.

(b) The revocation of an individual's assessor, ~~or~~ instructor, or program administrator certification shall be for a period of three (3) years and shall be effective on the date stated in the notice sent to the~~[an]~~ individual assessor, ~~or~~ instructor, or program administrator by the division.

Section 5. Certified Program, Assessor, ~~and~~ Instructor, or Program Administrator Complaints and Program Monitoring. (1) Complaints.

(a) An individual may submit a complaint related to a certified program, a certified assessor, ~~or~~ a certified instructor, or a program administrator that is not resolved by a program through its

grievance procedure to the division.

(b) A program shall be responsive and make an effort to resolve a client's complaint through its grievance procedure.

(c) A complaint shall be submitted to the division, in writing, on a DUI Complaint Form or in a letter.

(d) The division shall investigate a complaint, notify the complainant and the program, in writing, of the results of the investigation and take any necessary action.

(e) The division shall notify a professional licensing or certification board, in writing, at the conclusion of an investigation of the results of the investigation if a complaint is related to a violation of a standard established by a professional board or a statutory violation relating to the board's jurisdiction.

(2) Program reviews.

(a) The division shall conduct periodic program reviews to determine if a program is in compliance with the requirements established in this administrative regulation, and KRS 189A.040 and 189A.045.

(b) A program review shall consist of one (1) or more of the following:

1. An interview with either a program administrator or a clinical services supervisor;

2. Completion of a Comprehensive DUI Program Review Form;

3. A review of administrative records;

4. A review of client records using the Client Record Review form;

5. Off site monitoring by division staff of assessment ~~[completion]~~ records submitted by a program;

6. Observation of an assessment, education, or treatment service using the Assessment Observation Form, Education Observation Form, or Treatment Observation Form, as indicated by the type of service observed;

7. Client interviews using the Client Evaluation of Assessment Program, the Client Evaluation of Treatment Program, or the PRI Client's Evaluation of Education Services Received;

8. The review of other materials necessary to determine compliance with this administrative regulation, and KRS 189A.040 and 189A.045; or

9. Physical inspection of a program's facility.

(c) The division shall notify a program, in writing, at least two (2) weeks prior to the date of an announced program review.

(d) A program review may be made at any of a program's locations and may be unannounced.

(e) A program shall:

1. Allow a division representative access to a facility;

2. Provide a copy of records and materials requested; and

3. Allow a division representative to attend and observe an assessment, education class, or treatment session conducted by the program.

(f) The division shall issue a written report of findings and provide a copy of the results of its program review to the program within ninety (90) calendar days after completion of a program review.

(3) Plan of correction.

(a) The division shall require a program that is not in compliance with the requirements established in this administrative regulation, and KRS 189A.040 or 189A.045 to submit an acceptable plan of correction to the division within thirty (30) calendar days from the date a program receives a report of findings from the division.

(b) The plan of correction shall:

1. Be developed with participation of the program administrator, the clinical services supervisor, and any staff responsible for the implementation of the corrective action for the deficiencies

noted in the program review:

2. [(e)] Contain a descriptive plan of action including a time schedule for achieving implementation of the corrective actions for the deficiencies;

3. [(d)] Be accompanied by copies of any forms developed and utilized to bring the program into compliance, including those forms required by Section 3(7)(c)5. to 8. of this administrative regulation; and

4. [(e)] Be signed by the DUI Program Administrator and any staff involved in the development of the plan of correction and for the implementation of the corrective action for the deficiencies.

[(c); and (f)] If a plan of correction is acceptable, [t] The division may conduct a follow-up program review to ensure:

1. The plan of correction has been implemented; and

2. The program is in compliance with this administrative regulation, and KRS 189A.040 and 189A.045.

[(d)][(e)] If the division conducts a follow-up program review, a copy of the Follow-up DUI Program [Site Visit Follow-up Compliance] Review form shall be issued to the program within ninety (90) calendar days of the completion of the follow-up program review.

[(e)][(d)] If a plan of correction [is not acceptable,] has not been implemented, the division shall take action to revoke program certification.

(4) Voluntary closure.

(a) A program desiring to close voluntarily shall:

1. Notify the division, in writing, that it will voluntarily surrender its program certification by mailing to the division its DUI Program Certification Certificate;

2. Stop accepting client referrals;

3. Notify active clients in writing;

4. Refer a client and transfer case coordination responsibility of a client's case to a program of his or her choice; and

5. Submit to the division, within ten (10) calendar days of the notification made under subparagraph 1 of this paragraph, a list of active clients and a copy of the following information for each client:

a. Name, address and telephone number;

b. Date of birth and either the client's Social Security or driver's license number;

c. DUI conviction number;

d. Date of assessment and referral information including level of care and agency to which a client is referred;

e. Number of sessions completed;

f. Date of last attendance; and

g. Reason for noncompliance if a client is noncompliant.

(b)1. A program that voluntarily surrenders its certification in compliance with the requirements established in paragraph (a) of this subsection may reapply for program certification at any time.

2. The division shall revoke the program certification of a program that voluntarily surrenders its certification if the program fails to comply with the requirements established in paragraph (a) of this subsection. The revocation shall be in accordance with the requirements established in subsection (5)(d)[(5)(e)] of this section.

3. If a program voluntarily surrenders its certification following an action by the division to revoke the program's certification, revocation shall be in accordance with subsection (5)(d)[(5)(e)] of this section.

(5) Revocation of program certification.

(a) The division shall revoke the certification of a program that is not in compliance with the requirements established in this administrative regulation, and KRS 189A.040 or 189A.045.

(b) The division shall immediately revoke a program's certification if it determines there is an immediate danger to clients.

(c) The division shall revoke the certification of a program that

has failed to implement the plan of correction submitted to the division as a result of a program review.[:]

(d) The revocation of program certification shall be:

1. For a period of three (3) years; and

2. Effective on the date stated in the notice sent to the program by the division.

[(e)][(d)] If the division revokes program certification, a program shall:

1. Stop providing DUI services;

2. Stop accepting client referrals;

3. Notify active clients in writing;

4. Refer a client and transfer case coordination responsibility of a client's case to a program of his or her choice; and

5. Submit to the division, within ten (10) calendar days of the notification from the division, a list of active clients and a copy of the following information for each client:

a. Name, address and telephone number;

b. Date of birth and either the client's Social Security or driver's license number;

c. DUI conviction number;

d. Date of assessment and referral information including level of care and the name of the program to which a client is referred;

e. Number of sessions completed;

f. Date of last attendance; and

g. Reason for noncompliance if a client is noncompliant.

Section 6. Assessment Requirements. (1) Assessment process.

(a)1. Except as provided in subparagraph 2 of this paragraph, a program providing assessment services shall administer the Kentucky DUI Assessment Instrument to a client receiving a DUI assessment. A program may use supplemental assessments in addition to the Kentucky DUI Assessment Instrument.

2. A program shall have six (6) months from the 2011 effective date of this administrative regulation to comply with the requirement that the Web-based[PC-based or online] Kentucky DUI Assessment Instrument [shall] be administered in every DUI assessment. During this six (6) month transitional period, a program shall:

a. Meet the requirements for a DUI assessment established in this administrative regulation; and

b. Enter all new assessment records via the Internet.[meet the requirements for a DUI assessment established in:

a. This administrative regulation as those requirements existed on January 1, 2000; or

b. Subparagraph 1 of this paragraph.]

3. For users of the PC-based Kentucky DUI Assessment Instrument,[:] the Kentucky DUI Assessment Instrument records and the completion and noncompliance[non-compliance] reports shall be[are] electronically downloaded and sent either on removable computer media, or via email to the division, or its designee, on a monthly basis. Written notification shall be sent to the division or its designee, in lieu of electronic records if[in the event that no] records or reports are not available for download.[:]

4. For users of the Web-based Kentucky DUI Assessment Instrument,[:] new assessment records shall be[are] entered via the internet within three (3) business days of the assessment. Completion and noncompliance[non-compliance] information shall be entered within three (3) business days of a client's completion or noncompliance[non-compliance].

(b) The Kentucky DUI Assessment Instrument printout generated at a client's assessment shall:

1. Be signed and dated by the assessor and client;

2. Contain comments by the assessor explaining the referral

decision; and

3. Be placed in the client's file at least thirty (30) calendar days after the client's assessment.

(c) An assessment shall be conducted:

1. At a program's certified location; or

2. If a court orders an assessment of an individual that is incarcerated, in a jail or a prison.

(d) A DUI assessment shall be conducted in person, and shall include:

1. Administration of the Kentucky DUI Assessment Instrument;

2. A private face-to-face clinical interview conducted by a certified DUI assessor, using [either] the assessor's own clinical interview [or the structured interview provided in the Kentucky DUI Assessment Instrument,] with the findings of the interview recorded on the check list provided in the Kentucky DUI Assessment Instrument;

3. Consideration of referral options and the client's resources that are documented in the Kentucky DUI Assessment Instrument;

4. A determination of the severity of the client's problem;

5. Referral to a program of the client's choice that offers a service at the level of care appropriate to the severity of the client's problem; and

6. The cosigning by the client and assessor of the following forms developed by the program:

a. Fee agreement;

b. Client rights statement;

c. Confidentiality statement;

d. Freedom of choice statement and a referral agreement;

e. Confirmation that a client received an assessment statement;

f. Authorization for release of information;

g. Certificate of enrollment; and

h. Kentucky DUI Assessment Instrument printout.

(e)1. Except as provided in subparagraph 2 of this paragraph, a DUI assessment shall be conducted by an assessor holding valid certification from the division.

2. The screening instrument portion of the Kentucky DUI Assessment Instrument shall be either self-administered via a hard copy of the paper and pencil version of the AUDIT/DAST or administered by a certified or noncertified individual.

(f) The screening instrument portion of the Kentucky DUI Assessment Instrument shall be administered individually or in a group.

(g) A program shall maintain a Roster of Assessments that includes:

1. Client name, date of birth and Social Security or driver's license number;

2. Assessment date; and

3. Type of referral and referral program.

(h) A certified DUI assessor shall demonstrate knowledge, skills, and competence in the following essential clinical areas:

1. Classifying mental or substance abuse disorders using the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; [DSM or other accepted criteria for substance abuse disorders;]

2. Progression and characteristic of substance abuse disorder;

3. Range of life areas to be assessed and the effects of substance use on those areas;

4. Continuum of care, the available range of treatment modalities, and referral resources;

5. Administration and interpretation of screening instruments;

6. Assessment of a client's[clients] readiness and motivation to take responsibility and address substance abuse issues; and

7. Communication of recommendations to the client and accu-

rate documentation of the referral process.

(2) Client referrals. A DUI program shall accept a client referral from another program or a court.

(a) Court referral of DUI offenders.

1. An individual convicted of DUI in Kentucky shall obtain an assessment at a certified program of his choice or her listed in a directory published by the division in accordance with Section 3(9) of this administrative regulation.

2. Before accepting a client for an assessment, a program shall:

a. Obtain an AOC 494 form or a court order; or

b. Document the client's file to show the reason one (1) of these forms could not be obtained.

3. If a client has received an assessment for a[his] conviction at another DUI program, a program shall not conduct a subsequent assessment for the client without obtaining a new court order.

(b) Program referral of DUI offenders.

1. A program desiring to make or receive a client referral shall execute a written Memorandum of Understanding with the in-state or out-of-state programs[,] with which it will make or receive referrals.

2. A memorandum of understanding shall include the:

a. Name of both programs;

b. Date it is executed;

c. Duties and responsibilities of each program to include the requirements for case coordination contacts between the programs;

d. Purpose of the agreement;

e. Terms for termination of the agreement; and

f. Signatures of each program's program administrator.

3. A program may refuse a client referral because of:

a. Inadequate staff;

b. Lack of an appropriate service;

c. A client waiting list; or

d. A program's previous unsuccessful attempt to treat a client.

4. A program shall not accept a client referral from another program without first obtaining a copy of the client's assessment and other available records pertinent to the client's assessment, education, or treatment.

5. A program shall inform a client at the time of the[his] assessment that if the client[he] fails to disclose all [of his] outstanding DUI convictions, the services the client[he] receives will not meet the requirements for reinstatement of a[his] driver's license.

6. A program shall refer a client to a program of the client's choice, at an appropriate level of care based on the client's assessment. A program shall have a client sign a referral agreement stating the client[he] has been given freedom of choice in the selection of a program.

7. A program shall:

a. Allow a client freedom of choice in the selection of a program in which the client[where he] will receive education or treatment services; and

b. Not allow a client to select the level of care or type of service, which shall be based on the results of the client's[his] assessment and the availability of services.

8. A program shall transfer a client's assessment results and the referral form generated by the Kentucky DUI Assessment Instrument to a program of the client's choice offering service at the level of care needed by the client.

(3) Case coordination requirements.

(a) [General requirements.]

4.-] A program that conducts a client's assessment shall be responsible for case coordination whether the client receives education or treatment services at the program that conducted the[his]

assessment or at another program.

(b)[2]. To determine if a client is compliant or noncompliant, case coordination shall be conducted and include:

1.[a.] Having regular contact with the program receiving a client referral to determine a client's compliance with the recommended education or treatment;

2.[b.] Documentation in an assessment record of actions and contacts related to follow up on a client;

3.[c.] Sending a certificate of enrollment to the court after a client is assessed pursuant to KRS 189A.045;

4.[d.] Providing information on a client's progress to the court upon request;

5.[e.] Notifying the circuit clerk of the court within three (3) working days after making a determination or receiving notice that a client is noncompliant of the need to schedule a show-cause hearing;

6.[f.] Sending a completion report to the Transportation Cabinet and the court within three (3) working days after making a determination or receiving notice that a client is compliant;

7.[g.] Providing a certificate of completion to a client who[if he] satisfactorily completes the required services; and

8.[h.] Sending completed Kentucky DUI assessment [Instrument] records in accordance with subsection (1)(a)3. and 4. of this section on a monthly basis to the division or its designee on removable computer media or via online submission. [Downloading on a computer diskette Kentucky DUI Assessment Instrument records and completion and noncompliance reports and sending the diskette on a monthly basis to the division or its designee.]

(c)[3-]. A program administrator shall notify the court within three (3) working days of the date specified in the client's fee agreement, if a client fails to pay for an assessment within the time stated in the[his] fee agreement.

Section 7. Additional client considerations. (1) Out of State Clients and Program.[:]

(a) A [(4) Any] non-Kentucky licensee convicted of DUI in Kentucky may attend an out of state program without referral. Notification to or approval by the division shall not be[is not] required. The client shall bear[bears] the burden of demonstrating to the satisfaction of the court and Kentucky Transportation Cabinet that the out of state[out-of-state] program:

1. [(a)] Is licensed or otherwise authorized to provide DUI services;

2. [(b)] Complies at a minimum[:] with the requirements[requirement] of this administrative regulation; and

3. [(c)] Satisfies the requirements of KRS Chapter 189A.

(b) If [(2) When] a client receives an assessment from the Kentucky Certified DUI Program and chooses education or treatment services in another state, the Kentucky Certified DUI Program shall[:]

1. [(a)] Locate an out of state[out-of-state] program;

2. [(b)] Contact the out of state program to arrange the client's enrollment;

3. [(c)] Send the program receiving the referral a DUI Referral Report Form and a Case Coordination Form, which are part of the Kentucky DUI Assessment Instrument; and

4. [(d)] Provide case coordination.

(c)[(3)]. A Kentucky licensed driver and resident convicted of DUI pursuant to KRS 189A.010(1)(a) through (f) shall[189A.010 (a)-(f) must] receive a DUI assessment in Kentucky. Referral to an out of state program may be allowed if the program is licensed to provide services at the level of care necessary to satisfy Kentucky's requirements.

(d) If [(4) When] a non-Kentucky licensee with an out of state

conviction attends a Kentucky Certified DUI Program, compliance reporting and case coordination shall be in accordance with the requirements of the convicting state. [(b) Out-of-state clients and programs.]

1. A program administrator shall notify the state of conviction, in writing, on an Interstate Transfer Form, if a client that is satisfying a DUI conviction from another state enrolls in a certified DUI program.

2. A Kentucky licensed driver or an individual who is not a Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a) through (d) may be referred by a program after a DUI assessment to an out-of-state program for education or treatment if the program is licensed to provide services at the level of care necessary to satisfy his DUI in Kentucky. The referring program shall provide case coordination for the client.

3. A Kentucky licensed driver or an individual who is not a Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a) through (d), who has not received an assessment in Kentucky, may receive assessment, education, or treatment services at an out-of-state program if he first receives approval from the division. The division shall:

a. Approve the out-of-state program if the program:

(i) Is licensed or certified by the state in which it is located;

(ii) Provides assessments; and

(iii) Offers alcohol and other drug education or treatment services; and

b. Provide case coordination for the client.

2)[(e)] Clients with special needs.

[a][4-]. If a client is identified as having a special need at the time of [his] assessment, a program shall provide services either directly or through referral according to the following:

1. [a-] Questions and instructions shall be read orally to a client who is unable to read and responses shall be recorded for a client who is unable to write;

2. [b-] A qualified interpreter shall be provided for a deaf client;

3. [c-] Reasonable accommodations shall be made for a client who is unable to communicate in English; and

4. [d-] A pregnant client shall be referred for prenatal care.

(b)[2-]. A program shall document in a client's record special needs services the client receives.

(c)[3-]. Responsibility for payment of a special need service shall be according to the following:

1. [a-] A program shall be responsible for payment of interpreter services pursuant to KRS 30A.415; and

2. [b-] A client shall be responsible for payment of other services required because of a special need pursuant to KRS 189A.040.

(d)[4-]. A program shall comply with the rules of confidentiality established in:

1. [a-] 908 KAR 1:320 if providing interpreter services to a client in a federally-assisted program; or

2. [b-] KRS 222.271(1) if providing interpreter services to a client in a nonfederally-assisted program.

3)[(d)] A client that receives treatment before an assessment. If a client receives treatment after being charged with DUI, without first receiving an assessment, a program shall:

[a][4-]. Obtain a copy of a court order from the court and a copy of the client's uniform citation;

[b][2-]. Conduct an assessment and case coordination in accordance with Section 6(1) and (3) of this administrative regulation[subsections (1) and (3) of this section]; and

[c][3-]. Give the client credit for treatment [he] received since his or her DUI arrest if it can be documented that the treatment was at the level of care needed by the client based on the assessment

conducted pursuant to paragraph (b)[subparagraph-2] of this sub-section[paragraph].

(4)[(e)] A client with multiple DUI convictions. If a client presents for an assessment with multiple unresolved DUI convictions, a program shall:

(a)[1-] Obtain a copy of the client's uniform citation and an AOC 494 form or court order for each conviction;

(b)[2-] Conduct one (1) assessment and case coordination in accordance with Section 6(1) and (3) of this administrative regulation[subsections (1) and (3) of this section];

(c)[3-] Refer the client to treatment at a level of care appropriate to satisfy the client's clinical needs and all of the client's[his] DUI convictions; and

(d)[4-] Complete a separate completion report for each of the client's convictions.

(5)[(f)] A client convicted of DUI while enrolled in a program. If a client receives a subsequent conviction for DUI while enrolled in an education or treatment program, a program shall:

(a)[1-] Obtain a copy of the client's uniform citation and an AOC 494 form or court order for the subsequent conviction;

(b)[2-] Conduct another assessment and case coordination in accordance with Section 6(1) and (3) of this administrative regulation[subsections (1) and (3) of this section];

(c)[3-] Refer the client to a level of care appropriate to satisfy the client's clinical needs and all of the client's[his] DUI convictions;

(d)[4-] Document the client's file to show that the client's admission to treatment began at the time the client[he] was reassessed; and

(e)[5-] Complete a separate completion report for each of the client's convictions. ~~[(g) Reenrollment of a client. If a client requests reenrollment after he stops attending education or treatment, a program shall:~~

~~1. Reenroll the client and allow him to resume the education or treatment service at the point where he last attended if he has not been reported noncompliant to the court; or~~

~~2. Refer the client back to the court for a new court order before conducting a new assessment and starting the education or treatment service over if he has been reported as noncompliant to the court.]~~

(6)[(g)] Prior services received by a client.[:] If a client requests services after being reported noncompliant[non-compliant], a program shall:

(a)[1-] Refer the[a] client back to the court for a new court order;

(b)[2-] Conduct a DUI assessment; and

(c)[3-] Give the client credit for prior services if it can be documented that:

1. [(i)] The services were at the level of care indicated by the assessment;

2. [(ii)] The services were received within the last six (6) months; and

3. [(iii)] The client is progressing in accordance with the completion requirements.

(7)[(h)] Early release of a second offender. If the program responsible for a client's case coordination determines a second offender, who has completed at least six (6) months of the treatment that was recommended based on the client's assessment, has completed a program prior to the end of the one (1) year period ordered by the court, the administrator of the program shall send a written report notifying the court that the client has completed the program.

(8)[(i)] A client under twenty-one (21) years of age. If a client is under twenty-one (21) years of age, a program shall deliver services:

(a)[1-] In accordance with the requirements established in this administrative regulation if the client is convicted of DUI pursuant to KRS 189A.010(1)(a) through (d); or

(b)[2-] In accordance with a court order, not subject to the requirements established in this administrative regulation, if the client is convicted pursuant to KRS 189A.010(1)(e).

(9)[(i)] Early release of a first offender referred to treatment. A first offender referred to treatment may be deemed appropriate for release prior to the expiration of the ninety (90) day requirement if the offender:[in accordance with the following:]

(a)[1-] Has achieved all goals and objectives stated in the treatment plan;

(b)[2-] Has completed a minimum of two (2) months in treatment;

(c)[3-] Has received the recommendation of the assessor providing case coordination; and

(d)[4-] Has met all completion requirements.

(10)[(k)] Clients under the influence of alcohol or other drugs.[:] If a client presents for services under the influence of alcohol or other drugs:

(a)[1-] The DUI program staff shall protect the safety and welfare of all clients by arranging for the impaired client's removal from the facility;

(b)[2-] The DUI program administrator or the clinical services supervisor shall contact the case coordinator; and

(c)[3-] The case coordinator shall re-evaluate the level of care appropriate to address the client's problem.

Section 8.[7-] Education Requirements. (1) Approved curriculum[curricula].

[(a)] A DUI program desiring to provide education services shall ensure that:

(a)[1-] The education delivered within the program is the twenty (20) hour curriculum approved by the division, the PRIME for Life Risk Reduction Program (PRI) Twenty (20) Hour Curriculum; [That, except as provided in paragraph (c) of this subsection, within six (6) months of the effective date of this administrative regulation, the education delivered within the program is one (1) of the following twenty (20) hour curricula approved by the division:

a. Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour; and

b. Prime for Life Risk Reduction Program (PRI) Twenty (20) Hour; and]

(b) Education[2- Instruction] is provided;

1. In person by an instructor holding valid DUI instructor certification from the division for the particular education session to be delivered; or

2. For a program that delivered education via video telecommunication equipment on the effective date of this administrative regulation, either in person or through continued use of video telecommunication equipment for education delivery, by an instructor holding valid DUI instructor certification from the division. To deliver education via video telecommunication equipment under this subparagraph, the program shall:

a. Notify the division in writing within fourteen (14) days following the effective date of this administrative regulation of its preference to continue to use video telecommunication equipment in the delivery of education; and

b. Receive written approval from the Division within thirty (30) days of the effective date of this administrative regulation; [and]

(c)[3-] A certified instructor delivers a curriculum in accordance with the curriculum delivery standards established by subsection (2) of this section and was taught at a DUI instructor certification

training conducted by the ~~[division of]~~ Prevention Research Institute, Inc.;

(d)[4.] A certified DUI instructor demonstrates knowledge, communication, and facilitation skills as evidenced by:

1.[a.] Delivery of key supporting points of the curriculum;

2.[b.] Exhibiting skill in processing curriculum and participant journal activities;

3.[c.] Exhibiting fluency with curriculum content;

4.[d.] Ability to maintain class focus on subject of session;

5.[e.] Ability to engage each participant in discussions;

6.[f.] Ability to manage client defense and resistance;

7.[g.] Exhibiting sensitivity to individual client learning styles;

and

8. Communicating[h. Communicate] a belief in the accuracy and importance of the curriculum; and[.]

(e)[5.] A certified DUI instructor who is observed to lack the necessary skills outlined in paragraph (d) of this subsection receives[subsection (1)(a)4 of this section shall receive] additional instructor development to elevate his or her skill level to the extent necessary to perform as required by paragraph (d) of this subsection[subsection (1)(a)4 of this section].

[(b)] [-A DUI program may provide either or both of the twenty (20) hour curricula at a certified location.

(c)] [During the six (6) month transitional period established by paragraph (a)1 of this subsection, a program shall meet the requirements for a twenty (20) hour curriculum established in:

1. This administrative regulation as those requirements existed on January 1, 2000; or

2. Paragraph (a)1 of this subsection.;

(2) Delivery standards.

(a) The twenty (20) hour curriculum shall:

1. Be for a first offender assessed as needing only education or as a supplement to treatment if delivered to a first or multiple offender assessed as needing treatment;

2. Consist of twenty (20) hours of instruction and group interaction that increases a client's awareness and knowledge about the risks of alcohol and other drug use and helps develop skills to change a client's attitude and behavior in relation to alcohol and other drug abuse; and

3. Be delivered no more than:

a. Three (3) hours per day; and

b. Three (3) times per week.

(b) A program may enroll first offenders and multiple offenders in the same session.

(c) A program administrator shall ensure that:

1. There are no more than twenty (20) ~~[twenty-five (25)]~~ and no less than two (2) clients in a session;

2. A curriculum is delivered in accordance with the delivery standards established in this subsection;

3. Required manuals for a curriculum are distributed to and used by a client;

4. A client is given the manual for [his] personal use after completion of an education service;

5. Videos required in a curriculum are shown to a client; ~~[and]~~

6. Supplemental videos and speakers that are not approved as part of a curriculum are not used for an education service; ~~[and].~~

7. Evaluation of DUI educational classes are completed by the participants and submitted to the division at the conclusion of each twenty (20) hour education course.

(3) Documentation and completion requirements for education sessions.

(a) A program shall maintain a sign-in sheet for an education session that includes the:

1. Name of the curriculum;

2. Title and number of the session;

3. Date, time, location, and name of the instructor; and

4. Client name and signature.

(b) A program shall require a client to:

1. Attend and participate in each session of a curriculum;

2.a. If the client is a first offender, attend each session of the curriculum in any order; or

b. If the client is a multiple offender, except as provided by paragraph (c) of this subsection, attend sessions in sequence beginning with chapter 1;

3. Comply with a program's rules of conduct; and

4. Pay required fees.

(c) If a client who is a multiple offender cannot attend a session, due to an emergency, a program shall allow the client to attend a session out of sequence the next time the chapter is presented by a program. Documentation of the emergency shall be maintained in the client's file.

(d) If a client is receiving education at a program other than the program from which the assessment was received~~[where he received his assessment]~~, the program administrator shall notify the individual responsible for the client's case coordination if the client:

1. Demonstrates a need for service at a different level of care;

2. Satisfactorily completes education; or

3. Is noncompliant.

(e) If a client is receiving education at the program from which the assessment was received~~[where he received his assessment]~~, the program administrator shall:

1. Determine if the client has satisfactorily completed the DUI education service; and

2. Report compliance or noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation.

(f) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements established in this subsection.

Section 9.[8.] Treatment Requirements. (1) General requirements.

(a) A DUI program desiring to provide treatment services shall:

1. Comply with the licensing requirements established in Section 2 of this administrative regulation; ~~[and]~~

2. Employ treatment staff who meet the requirements established in 908 KAR 1:370, Section 8; and

3. Ensure that all treatment staff have knowledge, skill, and abilities demonstrating competence as evidenced by:

a. Communicating in a non-judgmental and respectful attitude toward clients;

b. Engaging clients in the treatment process;

c. Ability to facilitate group interaction;

d. Demonstrating knowledge of substance abuse related life issues;

e. Demonstrating knowledge of the signs and symptoms of relapse;

f. Utilizing techniques to assist clients in meeting goals;

g. Ability to deal effectively with resistance;

h. Ability to address individual client differences and needs;

i. Demonstrating knowledge of the physical and psychological complications of alcohol and other drug abuse; and

j. Demonstrating the ability to develop treatment plans and document progress notes in accordance with the standards established in subsection (2) of this section.~~[2. Employ qualified staff that have training and experience in dealing with the physical and psychological complications of alcohol and other drug abuse;]~~

(b) A program shall ensure that the treatment a client receives is based on that client's~~[his]~~ assessment. A client may be referred

to outpatient, intensive outpatient, inpatient, residential, residential transitional living, or detoxification treatment services in a licensed treatment program in state or out of state pursuant to the requirements established in this administrative regulation.

(c) A program shall deliver treatment services in person according to the requirements established in this paragraph following:

1. A client shall receive individual or group treatment.;

2. A treatment group may include first and multiple offenders in the same session.;

3. A sign in sheet shall be maintained which contains the date and location of the services and the signature of each client in attendance.

4. [3] The maximum number of clients in a treatment group shall not exceed fifteen (15).;

5. [4] A client may be referred to a self-help group to supplement but not to replace treatment services.;

6. [5] A client referred to outpatient treatment shall receive at least one (1) hour of individual or one and one-half (1 1/2) hours of group treatment each week.;

7. [6] A client referred to intensive outpatient treatment shall receive at least six (6) hours of treatment over a period of two (2) or more days weekly in a program licensed for intensive outpatient treatment.;

8. [7] If a client receives treatment less often than the requirements established in subparagraphs 6 and 7~~[5 and 6]~~ of this paragraph, to meet his or her individual clinical needs, a clinical rationale shall be documented in the client's record.;

9. [8] A client referred for inpatient or residential treatment shall receive this treatment in a program licensed for inpatient or residential treatment.

(2) Treatment plan.

(a) A clinician or treatment planning team shall be responsible for developing a treatment plan for a client accepted for treatment services by the client's fourth session.

(b) A treatment plan shall:

1. Be developed with a client's participation and be individualized for the needs of the client;

2. Include a written statement of the client's problem with alcohol and other drugs and any other problem that contributes to or is related to the client's use of alcohol and other drugs;

3. Include a written statement of treatment goals and measurable objectives with a time schedule for achieving the goals and a written statement of whether the client agrees with the treatment plan;

4. Be signed by the client and the clinician if there is a change documented in the client's treatment plan; and

5. ~~Be reviewed by the clinician and the client at least once every 180 calendar days or if there is a change documented in the client's treatment plan.~~

5. Be reviewed and signed by the clinician at least every:

a. Forty-five (45) calendar days for a first offender attending treatment;

b. 180 days for a multiple offender attending treatment; or

c. Thirty (30) days for a client receiving intensive outpatient treatment; or

d. If there is a change documented in the client's treatment plan, be reviewed and signed by the clinician and the client.

(c) A client's progress toward meeting the goals stated in the~~his~~ treatment plan shall be documented in the client's record by a clinician at least weekly.

(d) If the twenty (20) hour education curriculum is delivered as a supplement to treatment to a first or multiple offender assessed as needing treatment, it shall be included in a client's treatment

plan.

(3) Completion requirements.

(a) To complete a treatment service, a client shall:

1. Comply with all attendance requirements;
2. Achieve the goals stated in the~~his~~ treatment plan;
3. Comply with a program's rules of conduct; and
4. Pay required fees.

(b) If a client is receiving treatment at a program other than the program from which the assessment was received~~where he received his assessment~~, the program administrator of the treatment program shall notify the individual responsible for the client's case coordination if a client:

1. Demonstrates a need for service at a different level of care;
2. Satisfactorily completes treatment; or
3. Is noncompliant.

(c) If a client is receiving treatment at the program from which the assessment was received~~where he received his assessment~~, the program administrator shall be responsible for:

1. Final approval that the client has satisfactorily completed a treatment service; and

2. Reporting compliance or noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation.

(d) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements established in this subsection.

Section 10~~[9]~~ Administrative Hearing Requirements. (1) If the division takes action to deny~~;~~ or revoke~~;~~ a DUI program's certification or an individual's assessor, ~~or~~ instructor, or program administrator certification, the division shall:

(a) Notify the program or individual assessor, or instructor, or program administrator in writing; ;

(b) State~~stating~~ a reason for the adverse action; and

(c) Notify~~notifying~~ the program or individual assessor, ~~or~~ instructor, or program administrator of the right to appeal the action pursuant to KRS Chapter 13B.

(2) A program or individual assessor or instructor shall appeal a negative certification action taken by the division by notifying the division, in writing, postmarked within twenty (20) calendar days from the date of notice of action from the division.

(3) Upon receipt of an appeal, the secretary or the secretary's~~his~~ designee shall give notice of the hearing to a program or an individual assessor, ~~or~~ instructor, or program administrator, in writing, not less than twenty (20) calendar days in advance of the date set for the hearing and the notice shall be sent in accordance with KRS Chapter 13B.

(4) The secretary, or the secretary's~~his~~ designee, shall appoint a hearing officer to conduct a hearing and the hearing shall be conducted pursuant to KRS Chapter 13B.

(5) The division shall retain all records related to a hearing for a period of at least five (5) years.

Section 11~~[10]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for DUI Program Certification", October 2011;

(b) "Application for DUI Program Recertification", October 2011;

(c) "Assessment Observation Form", October 2011;

(d) "Client Evaluation of Assessment Program", October 2011;

(e) "Client Evaluation of Treatment Program", October 2011;

(f) "Client Record Review", October 2011;

(g) "Comprehensive DUI Program Review Form", October 2011;

(h) "DUI Complaint Form", October 2011;

(i) "DUI Assessor Certification Application", October 2011;

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~~(i) "DUI Assessor Recertification Application", October 2011;~~
~~(k) "DUI Program Certification Certificate", October 2011;~~
~~(l) "DUI Instructor Certification Application", October 2011;~~
~~(m) "DUI Instructor Recertification Application", October 2011;~~
~~(n) "DUI Program Administrator Certification Application", October 2011;~~
~~(o) "DUI Program Administrator Recertification Application", October 2011;~~
~~(p) "Education Observation Form", October 2011;~~
~~(q) "Follow-up DUI Program Review", October 2011;~~
~~(r) "PRI Client's Evaluation of Education Services Received", October 2011;~~
~~(s) "Program Survey Form", October 2011;~~
~~(t) "Report of Change Form", October 2011;~~
~~(u) "Treatment Observation Form", October 2011;~~
~~(v) AOC-494, "Notice to Attend Alcohol Driver Education Program", May 1996;~~
~~(w) "Memorandum of Understanding", October 1, 1998;~~
~~(x) "Roster of Assessments", October 1, 1998;~~
~~(y) "Kentucky DUI Assessment Instrument", October 2011; and~~
~~(z) "Prime for Life Risk Reduction Program (PRI) Twenty (20) Hour Curriculum", February 1, 2005. [(a) AOC 494 form (Rev. 5-96) Notice to Attend Alcohol Driver Education Program (revised 5/96);]~~
~~[(a)] [(b)] [Application for DUI Program Certification Form, DUI Form-01] [(revised 3/2000)];~~
~~[(b)] [(c)] [Application for DUI Program Recertification Form, DUI Form-02] [06 (revised 3/2000)];~~
~~[(c)] [(d)] [Assessment Observation Form, DUI Form-03:] [Complaint Form DUI Form-05 (revised 10/01/98);]~~
~~[(d)] [(e)] [Client Evaluation of Assessment Program, DUI Form 04:] [DUI Assessor Certification Application DUI Form-10 (revised 3/2000);]~~
~~[(e)] [(f)] [Client Evaluation of Treatment Program, DUI Form 05:] [DUI Assessor Recertification Application DUI Form-11 (revised 3/2000);]~~
~~[(f)] [(g)] [Client Record Review, DUI Form-06:] [Instructor Certification Application DUI Form-12 (revised 3/2000);]~~
~~[(g)] [(h)] [Comprehensive DUI Program Review Form, DUI Form-07:] [DUI Instructor Recertification Application DUI Form-13 (revised 3/2000);]~~
~~[(h)] DUI Complaint Form, DUI Form-08;~~
~~(i) DUI Assessor Certification Application, DUI Form-09:] [Interstate Transfer Form DUI Form-08 (10/01/98);]~~
~~[(j)] DUI Assessor Recertification Application, DUI Form-10:] [DUI Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour (1998);]~~
~~[(k)] DUI Program Certification Certificate, DUI Form-11:] [Kentucky DUI Assessment Instrument (10/01/98);]~~
~~[(l)] DUI Instructor Certification Application, DUI Form-12:] [Memorandum of Understanding DUI Form-07 (revised 10/01/98);]~~
~~[(m)] DUI Instructor Recertification Application, DUI Form-13:] [Prime For Life Risk Reduction Program (PRI) Twenty (20) Hour (1998);]~~
~~[(n)] DUI Program Administrator Certification Application, DUI Form-14:] [Program Certification Certificate DUI Form-15 (10/01/98);]~~
~~[(o)] DUI Program Administrator Recertification Application, DUI Form-15:] [Program Review Form DUI Form-04 (revised 3/2000);]~~
~~[(p)] Education Observation Form, DUI Form-16:] [Program Survey Form DUI Form-02 (revised 10/01/98);]~~
~~[(q)] Follow-up DUI Program Review Form, DUI Form-17:] [Report of Change Form DUI Form-03 (revised 10/01/98);]~~
~~[(r)] PRI Client's Evaluation of Education Services Received, DUI Form-18:] [Roster of Assessments DUI Form-09 (10/01/98);]~~
~~[(s)] Program Survey Form, DUI Form-19:] [Site Visit Follow-up Compliance Review Form DUI Form-14 (revised 3/2000);]~~
~~[(t)] Report of Change Form, DUI Form-20; and~~

~~(u) Treatment Observation Form, DUI-21.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation Services], Division of Behavioral Health [Substance Abuse], 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 13, 2011

FILED WITH LRC: July 14, 2011 at noon

CONTACT PERSON: Jill Brown, Cabinet for Health and Family Services, 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

COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Comments)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 158.6451, 158.6453, 164.001, ~~164.011, 164.020~~(3), (5), (8), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the council to set the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all prospective students have available to them an opportunity for postsecondary education appropriate to their interests and abilities. This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions. ~~[The college readiness standards established in this administrative regulation shall not release institutions from the requirements contained in 13-KAR 2:060, degree program approval; equal opportunity goals.]~~

Section 1. Definitions. (1) "Adult learner ~~[student]~~" means a student who is twenty-one (21) years of age or older.

(2) "Certified, nonpublic school" means a Kentucky non-public school that has voluntarily agreed to comply with the Kentucky Board of Education curriculum and textbook standards, received accreditation by an agency approved by the Kentucky Board of Education, been recommended for certification by the Kentucky Non-Public School Commission, and had the recommended certification approved by the Kentucky Board of Education.

(3) "Council" is defined by KRS 164.001(8).

(4)~~[(3)]~~ "Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.

(5)~~[(4)]~~ "Institution" ~~[or "institutions"]~~ means a state-supported postsecondary education institution as defined in KRS 164.001(12).

(6)~~[(5)]~~ "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).

(7) "Pre-college curriculum" means the Kentucky high school graduation requirements or other approved course of study established in 704 KAR 3:303, and two units of a single world language or demonstration of a world language proficiency.

(8) "Student eligible to pursue a GED®" means a student who has met the federal ability to benefit guidelines.

(9) "Supplemental course or program" means a college or university class, additional class hours, tutoring, or mentoring beyond that required for a student who meets the system-wide standards for readiness.

(10)~~[(6)]~~ "System-wide standard" means an ACT Assessment sub-score of eighteen (18) in English, nineteen (19) in mathematics, or twenty (20) in reading.

Section 2. Minimum Qualifications for Institutional Admission as a First-time Student to a State-supported University~~[Students]~~.

(1)(a) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a Kentucky state-supported university~~[seeking to enter a community and technical college]~~ shall have fulfilled the minimum requirements for admission to a baccalaureate degree program~~[degree program established by the Kentucky Community and Technical College System consistent with this administrative regulation]~~ if the applicant has met the admission criteria established by the institution and:

1. Graduated from a public high school or a certified nonpublic high school; or

2. Earned a high school general equivalency diploma (GED).

(b) The Kentucky Community and Technical College System may choose to exempt students who are eligible to pursue a GED

from the requirements of paragraph (a) of this subsection if the KCTCS publishes the exemption policy in the student catalog.

(c) ~~An applicant to a community college type program at a university shall:~~

1. Satisfy the minimum requirements for admission to a two (2) year degree program established by the admitting institution consistent with this administrative regulation; and

2. Take the ACT Assessment.

(2)(a) ~~Except as provided in paragraph (b) of this subsection, an applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:]~~

1. Graduated from a public high school or a certified non-public high school;

2. Completed the pre-college curriculum~~[established in Section 3 of this administrative regulation]; and~~

3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency diploma (GED®)~~[(GED)]~~ or who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission~~[may be admitted]~~ to a baccalaureate program~~[at a university]~~ by meeting the admission criteria established by a university, in writing, and by taking the ACT Assessment and by scoring at levels established by the university.

(c)~~[(3)]~~ Notwithstanding the provisions of paragraphs (a) and (b) of subsection[s] (1)~~[and (2)]~~ of this section, a university may substitute the SAT for the ACT Assessment. A university may substitute the ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, KYOTE Testing Program, or ACCUPLACER Testing Program~~[may be substituted]~~ for the ACT Assessment requirement for an adult learner~~[student]~~.

(d) Provide that KCTCS graduates of approved associate of arts and associates of science programs shall receive priority for admission to a state public university over out-of-state students if they meet the same admission criteria (KRS 164.2951, Section 2).

~~[(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic high school and completed a course of study. Noncertified nonpublic schools shall include a home school.]~~

(2)~~[(5)]~~ A non-resident~~[seeking admission to a baccalaureate degree program at a university]~~ shall have fulfilled the minimum requirements for admission to a baccalaureate degree program at a university if the applicant has met the admission criteria established by the institution and ~~[complete]:~~

(a)~~[The ACT recommended college core courses for the pre-college curriculum which are listed in the Benefits of a High School Core Curriculum, ACT 2006; or~~

(b) Completed a college preparatory curriculum comparable to Kentucky's pre-college curriculum; and

(b) Taken the ACT Assessment or the SAT Assessment ~~[established in Section 3 of this administrative regulation].~~

(3)~~[(6)]~~(a) A university may~~[, under extenuating circumstances,]~~ admit a student who has not met the testing requirements of subsection (1)~~[(2)]~~(a)3 or (2)(b) of this section if the university has a written policy defining ~~the~~~~[extenuating]~~ circumstances that require the testing be delayed.

(b)~~[(f)]~~ A university admitting a student under paragraph (a) of this subsection, ~~[the student]~~ shall satisfy the provisions of subsection (1)~~[(2)]~~(a)3 or (2)(b) of this section during the first semester of enrollment.

(4) The requirement to complete the pre-college curriculum shall apply to:

(a) A first-time university student pursuing a baccalaureate degree with or without a declared major;

(b) A university student who is already enrolled and who is converting from non-degree status to baccalaureate degree status;

(c) A student changing from certificate or associate degree status to baccalaureate degree status; or

(d) A student transferring from another institution who has been admitted to baccalaureate degree status by a state-supported university.

(5) A university shall accept a waiver of a pre-college curriculum course if:

(a) A student is unable to complete the course because of a physical handicap;

(b) The school district superintendent or designee verifies that a student's handicapping condition prevents the student from completing the course in question; and

(c) The student completes a course substituted by the local school in accordance with 704 KAR 3:305, Section 3(2).

(6) The requirement to complete the pre-college curriculum as set forth in Section 2(1)(a)2. shall not apply to:

(a) An adult student;

(b) A student entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a grade point average (GPA) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A non-resident student subject to the provisions of subsection (2) of this section; or

(f) An international student.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

(8) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission shall be exempt from the requirement of meeting the pre-college curriculum as set forth in subsection (2)(a)2.

(9) A university may admit a person who does not meet the entrance requirements established in this section, for the purpose of enrolling in a college course or courses as a non-degree student.

(10) A state-supported university that[who] admits a student in an associate or baccalaureate degree program[and] who does not meet the system-wide readiness standards for English, mathematics, and reading shall use a placement exam to place a student in the proper course. If a student scores below the system-wide standard of readiness in English, mathematics, and reading as outlined in the College Readiness Indicators document incorporated by reference, a university shall place the student in an:

(a) Appropriate developmental course in the relevant discipline within two semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two semesters following a student's initial enrollment, provided that the course offers supplementary academic support such as extra class sessions, additional labs, tutoring, and increased monitoring of students beyond that usually associated with an entry-level course.

(11)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:

1. A sub-score on the ACT Assessment of eighteen (18) or higher;

2. Met an English benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness document; or

4. Successfully completed a developmental or supplemental English course at a public postsecondary education institution where the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:

1. A sub-score on the ACT Assessment of nineteen (19) or higher;

2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:

1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;

2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.

(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:

1. A sub-score on the ACT Assessment of twenty (20) or higher;

2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;

3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;

4. Successfully completed a high school reading transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(e) A student who scores twenty-seven (27) or higher [high] on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.

(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in subsection (11) (a) through (e) shall be guaranteed placement in credit-bearing course work.

(12) An adult student who has been admitted without taking the ACT Assessment or the SAT may be placed into an appropriate course based on the following tests:

(a) The ACT Residual Test

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The KYOTE Testing Program;

(e) The ACCUPLACER Testing Program; or

(f) An institutional placement test.

(13) An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(14) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.

(15) A university shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:

(a) ACT or SAT scores;

(b) institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades[Trades] in developmental entry-level courses.

Section 3. Minimum Qualifications for Institutional Admission as a First-time Student to the Kentucky Community and Technical College System (KCTCS). (1) Except as provided by paragraph (b) of this subsection, an applicant who is a resident of Kentucky and who seeks admission to a community and technical college degree program established by the Kentucky Community and Technical College System **may be admitted** if the applicant has:

(a) Graduated from a public high school or certified non-public high school; or

(b) Earned a general equivalency diploma (GED®);

(2) An applicant who has earned a high school general equivalency diploma (GED®) or who is a graduate of a Kentucky based non-certified non-public high school, including a home school, shall have fulfilled the requirements for admission to a community or technical college by meeting the admission criteria established by KCTCS, in writing.

(3) KCTCS may waive the requirement to take the GED® as set forth in subsection (1)(b) pursuant to a written policy published by KCTCS.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission without meeting the requirements of subsection (1)(a) and (b).

(5) KCTCS may admit a person who does not meet the entrance requirements established in this section, for the purpose of enrolling in a college course or courses as a non-degree student.

(6) KCTCS, in admitting a student to a degree program who does not meet the system-wide readiness standards for English, mathematics, and reading, shall use a placement exam to place a student in the proper course. If a student scores below the system-wide standard of readiness in English, mathematics, and reading as outlined in the College Readiness Indicators document incorporated by reference, the institution shall place the student in an:

(a) Appropriate developmental course or adult education course of study in the relevant discipline within two semesters following a student's initial enrollment; or

(b) Appropriate entry-level college course within two semesters following a student's initial enrollment, provided that the course offers supplementary academic support such as extra class sessions, additional labs, tutoring, and increased monitoring of students beyond that usually associated with an entry-level course.

(7)(a) A student shall not be required to enroll in a developmental or supplemental course in English if the student has:

1. A sub-score on the ACT Assessment of eighteen (18) or higher;

2. Met an English benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school English transitional course or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness document; or

4. Successfully completed a developmental or supplemental English course at a state-supported postsecondary education institution where the course meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(b) A student shall not be required to enroll in a developmental or supplemental mathematics course if the student is enrolling in a liberal arts mathematics course, and has:

1. A sub-score on the ACT Assessment of nineteen (19) or higher;

2. Met a liberal arts mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a high school mathematics transitional course or intervention program and met the system-wide mathematics benchmark for readiness for a mathematics liberal arts course outlined in the College Readiness Indicators document; or

4. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(c) A student shall not be required to enroll in a developmental or supplemental course in college algebra if the student has:

1. A sub-score on the ACT Assessment of twenty-two (22) or higher in mathematics;

2. Met a college algebra mathematics benchmark placement score outlined in the College Readiness Indicators document;

3. Successfully completed a developmental or supplemental mathematics course at a state-supported postsecondary education institution that meets the system-wide learning outcomes for college algebra identified in the College Readiness Indicators document.

(d) A student shall not be required to enroll in a developmental or supplemental course in reading if the student has:

1. A sub-score on the ACT Assessment of twenty (20) or higher;

2. Met a reading benchmark placement score outlined in the College Readiness Indicators document;

3. Completed twelve (12) hours of reading intensive work at a postsecondary education institution;

or intervention program and met the system-wide English benchmark for readiness outlined in the College Readiness Indicators document; or

5. Successfully completed a developmental or supplemental reading course at a state-supported postsecondary education institution that meets the system-wide learning outcomes identified in the College Readiness Indicators document.

(e) A student who scores twenty-seven (27) or high on the ACT Assessment in mathematics shall be permitted to enroll in a credit-bearing calculus course.

(f) A student who demonstrates a level of competence by achieving the standards established in the College Readiness Indicators document, and by achieving the scores contained in subsection (7) (a) through (d) shall be guaranteed placement in credit-bearing course work.

(8) An adult student who has been admitted without taking the ACT Assessment or the SAT may be placed into an appropriate course based on the following tests:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The KYOTE Testing Program;

(e) The ACCUPLACER Testing Program; or

(f) An institutional placement test.

(9) An institution shall be responsible for determining the remediation required including the number of developmental courses required.

(10) An institution shall enroll a student who scores below the state-wide readiness standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, in an appropriate course requiring college-level reading skills.

(11) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in English, mathematics, and reading. The list of certificate and diploma programs that exempt students from the required assessment and placement shall be published by KCTCS in the student catalog.

(12) KCTCS shall report to the Council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time student performance monitoring system shall include:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Trades in developmental entry-level courses. [Precollege Curriculum. (1) An applicant to a baccalaureate degree program at an institution shall complete twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study:

(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English;

(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, three (3) units of high school study in mathematics, including Algebra I, Algebra II, and Geometry.

1. An integrated, applied, interdisciplinary, or technical/occupational course may be substituted for a traditional Algebra I, Geometry, or Algebra II course if the course meets the appropriate content standards described in the Program of Studies, which is incorporated by reference in 704 KAR 3:303;

2. A mathematics course whose content is more rigorous than Algebra I shall be accepted as a substitute for Algebra I.

3. An Algebra I course taken prior to high school shall be counted as a required mathematics course if the academic content of the course is at least as rigorous as the appropriate high school algebraic thinking standards outlined in the Program of Studies, which is incorporated by reference in 704 KAR 3:303;

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course;

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization;

(e) One-half (1/2) unit in health education;

(f) One-half (1/2) unit in physical education;

(g) One (1) unit in history and appreciation of visual and performing arts; and

(h) Two (2) units in the same foreign language unless:

1. The applicant's local school has diagnosed the student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1:340; and

2. Either:

a. The school has determined that the learning disability precludes the student from successfully completing a foreign language course; or

b. The applicant demonstrates linguistic competence and awareness of a foreign language at least equivalent to two (2) years of high school language.

(2) In addition to the requirements of subsection (1) of this section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies;

(b) Science;

(c) Mathematics;

(d) English/language arts;

(e) Arts and humanities;

(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health;

(g) Foreign language; or

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways.

(3)(a) An integrated, applied, interdisciplinary, or higher level course shall be substituted for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated mathematics courses shall be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence.

(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4) An institution may establish additional requirements to supplement this minimum academic preparation.

(5)(a) An institution shall accept a waiver of a required precollege curriculum course if:

1. A student is unable to complete a course because of a physical handicap; and

2. The school district superintendent or designee verifies that a student's handicapping condition prevents the student from completing the course in question.

(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local school may substitute another course in accordance with 704 KAR 3:305, Section 3(2).

(6) An institution shall determine whether an applicant has met these minimum academic preparation requirements.

(7) The precollege curriculum requirement shall apply to:

(a) A first-time student pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate degree level to baccalaureate degree level; or

(d) A student who, transferring from another institution, has been admitted to baccalaureate degree status by the receiving institution.

(8) The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A nonresident student because he or she is subject to the provisions of Section 2(5) of this administrative regulation; or

(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university shall have the option of admitting conditionally a first-time student applicant to a baccalaureate degree program who has not met the requirements of Section 3 of this administrative regulation. A first-time student admitted conditionally shall remove or otherwise satisfy academic deficiencies in a manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provisions in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a community college type program in a university shall be assessed and reported to the Council on Postsecondary Education.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) At the discretion of the institution, a person who does not meet college entrance requirements, including high school students, may enroll in a college course as a nondegree student.]

Section 4(4)(5). Transfer Students. (1) The council's General Education Transfer Policy and Implementation Guidelines, incorporated by reference, shall direct an institution's policy on the acceptance of transfer credits.

(2) An institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) A university or the KCTCS [An institution], consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.

[Section 6. Assessment and Placement of Students. (1) The Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics shall apply to:

(a) A first-time student enrolled in an associate or baccalaureate-degree program or a certificate or diploma program at an institution;

(b) A student who transfers from a degree program at one (1) institution into a degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;

(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English; or

(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student shall be exempt from systemwide mandatory assessment and placement policies.

(3) Except as provided in subsection (11) of this section, an institution shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. An institution may accept scores on the SAT in lieu of the ACT Assessment for placement in college-level courses.

(4) If a student is determined to have not met the systemwide standards for readiness, an institution shall use a placement exam to help place the student in the proper course.

(5) An institution shall place a student who scores below the systemwide standard in mathematics, English, or reading in an:

(a) Appropriate developmental course in the relevant discipline; or

(b) Entry-level college course, if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that usually associated with an entry-level course.

(6) Effective with the fall semester of 2010, an institution shall satisfy the provisions of subsection (5) of this section by placing a student in the appropriate developmental course or entry-level college course within the first two (2) academic terms that a student is enrolled.

(7)(a) A student shall not be required to enroll in a developmental course in English if the student has a sub-score on the ACT Assessment of eighteen (18) or higher in English. The student shall be permitted to enroll in a credit-bearing writing course.

(b) A student shall not be required to enroll in a developmental course in Mathematics if the student has a subscore on the ACT Assessment of nineteen (19) or higher in Mathematics.

1. A student who scores between nineteen (19) and twenty-one (21) shall be permitted to enroll in a credit-bearing mathematics course.

2. A student who scores twenty-two (22) through twenty-six (26) on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing algebra course.

3. A student who scores twenty-seven (27) or higher on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing calculus course.

(c) A student who has been admitted to an institution and who demonstrates a level of competence by achieving the standards established in the Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics, which is incorporated by reference, and by achieving the scores contained in paragraph (a) or (b) of this subsection shall be guaranteed placement in credit-bearing coursework.

(8) An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The ACCUPLACER Testing Program; or

(e) An institutional placement test.

(9) An institution shall be responsible for determining the remediation required including the number of developmental courses required, if necessary.

(10) Effective with the fall semester of 2010, an institution shall enroll a student who scores below the statewide standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, appropriate course work requiring college-level reading skills.

(11)(a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills.

(b) KCTCS may use the ACT Assessment scores or SAT scores to place a student into an appropriate developmental course.

(12) KCTCS shall place a degree-seeking student who scores below the systemwide standard in mathematics, English, or reading in an:

(a) Appropriate developmental course in the relevant discipline; or

(b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

(13) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading. The list of certificate and diploma programs that exempt students from the required assessment and placement in mathematics, English, and reading shall be published by KCTCS in the student catalog.

(14) an institution shall report to the council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time students performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in developmental and entry-level courses.]

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

(a) "General Education Transfer Policy and Implementation Guidelines", 2011[2004], Council on Postsecondary Education;

(b) College Readiness Indicators, 2010["Benefits of a High School Core Curriculum", 2006, ACT; and

(c) "Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics", 2004.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Chair

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

CONTACT PERSON: Dr. Sue Cain, Coordinator, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, phone (502)573-1555, ext. 254, fax (502)573-1535, email sue.cain@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets out the minimum admission and placement standards for students who attend public postsecondary education institutions.

(b) The necessity of this administrative regulation: KRS 164.020(8) requires that the Council on Postsecondary Education set minimum admission standards for students who wish to enroll at state-supported postsecondary education institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prospective students, local school districts, and the public postsecondary education institutions all need to understand the requirements for admission to college so that students can take the required courses in secondary school, local schools can offer the courses that are required and adopt standards that prepare students for college, and so that colleges and universities can evaluate whether students have met the required standards for placement in credit-bearing coursework.

(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: High school graduation requirements for the graduating class of 2012 were revised by the Kentucky Board of Education in 2008 to include mathematics every year a student is in high school, including algebra I and II and geometry. Based on these changes, the Guidelines for Admission to the State-supported Postsecondary Education Institutions in regulation can be simplified to align with the new graduation requirements.

(b) The necessity of the amendment to this administrative regulation: The regulation needed revised to create an alignment of public K-12 and postsecondary institutions curriculum and readiness requirements and assessments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The set of college readiness indicators and learning outcomes create a unified statement about college readiness that will be used by public K-12 schools and postsecondary institutions. Students meeting a readiness benchmark, as outlined in the College Readiness Indicators document, will be guaranteed placement into credit-bearing coursework across Kentucky's public postsecondary campuses. These indicators and learning outcomes will inform the design of the high school intervention, college accelerated learning, and bridge programming.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Eight state-supported postsecondary education institutions and the Kentucky Community and Technical College System (KCTCS) are affected. All high school students who might attend a public postsecondary education institution upon graduation are affected, as are the local school districts who must prepare those students, and the Kentucky Department of Education who must set the standards for graduation from high school.

(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: Campuses may need to add additional indicators of readiness in the student database system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated as a result of the change in the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: The standards and assessments for high school graduation and the minimum standards for entrance into college will be aligned for the first time which should reduce the need for developmental education and placement testing on postsecondary campuses.

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

(a) Initially: No additional costs due to reallocation of funds.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Institutions have general fund appropriations to assist with implementation of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No fees or revenue are associated with this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in these circumstances.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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-supported colleges and universities, local school districts, and the Kentucky Department of Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.020(8)

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

(a) How much 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 additional costs.

(d) How much will it cost to administer this program for subsequent years? See 4.(c) above.

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

Revenues (+/-): This is a revenue neutral proposal

Expenditures (+/-):

Other Explanation: N/A

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 2011

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.028(c) requires the Education Professional Standards Board to conduct an annual review of diversity in teacher preparation programs. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to an educator preparation program.

Section 1. Selection and Admission to Educator Preparation Programs. (1) In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated by reference in 16 KAR 5:010, each educator preparation institution shall develop minimum standards for admission to its initial certification educator preparation programs, including university-based alternative programs established pursuant to KRS 161.048(7) in accordance with this section.

(2) Beginning September 1, 2012, admission to an undergraduate initial certification educator preparation program shall require the following:

(a) 1. A cumulative grade point average of 2.75 on a 4.0 scale;

or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed; and

(b) Successful completion of the following pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum score:

1. a. "Pre-Professional Skills Test: Mathematics" (0730) -174;

or

b. "Computerized Pre-Professional Skills Test: Mathematics" (5730) - 174;

2. a. "Pre-Professional Skills Test: Reading" (0710) – 176; or

b. "Computerized Pre-Professional Skills Test: Reading" (5710) – 176; and

3. a. "Pre-Professional Skills Test: Writing" (0720) – 174; or

b. "Computerized Pre-Professional Skills Test: Writing" (5720) – 174.

(3) Beginning September 1, 2012, admission to a graduate level initial certification educator preparation program, including an educator preparation program established pursuant to KRS 161.048(7), shall require the following:

(a) 1. A bachelor's degree or advanced degree awarded by a regionally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(b) 1. Successful completion of the pre-professional skills assessments in subsection (2)(b) of this section; or

2. Successful completion of the Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding scores on the corresponding sections:

a. i. Verbal Reasoning taken prior to August 1, 2011 - 450; or

ii. Verbal Reasoning taken after August 1, 2011 – 150; and

b. i. Quantitative Reasoning taken prior to August 1, 2011 - 490, or

ii. Quantitative Reasoning taken after August 1, 2011 - 143; and

c. Analytical Writing - 4.0.

(4) Beginning September 1, 2012, each accredited educator preparation institution shall have a formal application procedure for admission to an initial teacher preparation program, which shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;

2. Communication;

3. Creativity; and

4. Collaboration;

(b) Evidence that the applicant has reviewed:

1. The Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

2. The character and fitness questionnaire contained in Section III of the TC-1 incorporated by reference in 16 KAR 2:010; and

(c) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(5) Undergraduate students shall not enroll in any educator preparation program courses restricted to admitted candidates.

(6) The educator preparation program shall maintain electronic records that document that all students admitted after September 1, 2012, meet the requirements subsection (2) of this section, and publish a plan of selection and admission of candidates for the educator preparation program, which shall include:

(a) Tests to measure general academic proficiency;

(b) An evaluation of the candidate's disposition for the education profession; and

(c) Affirmation that candidates are provided a review of the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020, to ascertain awareness, knowledge, and commitment as required for state educator certification.

(2) The educator preparation institution shall file the plan with the Education Professional Standards Board.

Section 2. Tests to Measure General Academic Proficiency. (1) The educator preparation institution shall determine whether each candidate exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) A candidate who plans to apply for admission to an educator preparation program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. A person shall not be permitted to apply for admission to a preparation program leading to certification as an educator without first providing evidence of meeting the general academic proficiency requirement.

(3) The educator preparation institution shall select the means of evidence for meeting the general academic proficiency requirement, which may include a combination of:

(a) College admission exams;

(b) Praxis I exams administered by the Educational Testing Service;

(c) Other assessments; or

(d) Grade point average.

Section 3. (1) An educator preparation unit identified as "low performing" or "at risk of low performing" pursuant to 16 KAR 5:010 shall implement one (1) or more of the following assessment plans for candidate admission:

(a) Plan I. A minimum composite score of 21 on the American College Test (ACT);

(b) Plan II. PreProfessional Skills Test (PPST) results, with the following minimum scores:

1. Reading 173;

2. Mathematics 173; and

3. Writing 172;

(c) Plan III. Graduate Record Examination (GRE) General Tests. Each educator preparation institution shall establish a minimum passing score on the GRE as a measurement of verbal reasoning, quantitative reasoning, and analytical writing skills for admis-

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sion when the entry into the educator preparation program is at the graduate level; or

(d) Plan IV. SAT with, a minimum composite score of 1470.

(2)(a) An educator preparation unit identified as "low performing" or "at risk of low performing" pursuant to 16 KAR 5:010 shall require a candidate to obtain a cumulative grade point average of 2.50 on a 4.0 scale for admission to an educator preparation program.

(b) A candidate who does not meet the grade point average established in paragraph (a) of this subsection shall possess a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework, for admission to an educator preparation program.]

Section 2[4]. Annual Report. (1) Each educator preparation unit shall submit an electronic report annually to the Education Professional Standards Board[,] that includes the following program data on each candidate[candidates] admitted to educator preparation programs:

(a) The candidate's Education Professional Standards Board Person Identifier;

(b) The candidate's Student School Identification number;

(c) The candidate's Social Security number;

(d) The candidate's full name;

(e) The candidate's birth date;

(f) The candidate's reported ethnicity;

(g) The candidate's reported gender;

(h) The candidate's email address;

(i) The candidate's present home mailing address;

(j) The candidate's permanent home mailing address;

(k) The candidate's phone number;

(l) The candidate's admission date;

(m) The candidate's total number of credit hours prior to admission to the institution's educator preparation program;

(n) The candidate's total number of credit hours in educator preparation courses completed prior to admission to the institution's educator preparation program;

(o) The candidate's grade point average at admission;

(p) The candidate's current program enrollment status;

(q) The candidate's program completion date;

(r) The candidate's grade point average at program completion;

(s) The candidate's academic major at program completion;
and

(t) The candidate's academic minor or minors at program completion, if applicable.

(2) The report shall be submitted in the following manner:

(a) The institution shall electronically submit all data identified in subsection (1) to the Education Professional Standards Board; and

(b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the Director of the Division of Educator Preparation that all required information has been entered.

(3) The preparation program shall exit any candidate who has not been enrolled in at least one (1) course required for program completion within the last eighteen (18) months.

(4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status pursuant to 16 KAR 5:010 Section 21.](4) The candidate's Education Professional Standards Board Person Identifier;

(2) The candidate's Student School Identification number;

(3) The candidate's Social Security number;

(4) The candidate's full name;

(5) The candidate's birth date;

(6) The candidate's Email Address;

(7) The candidate's present home mailing address;

(8) The candidate's permanent home mailing address;

(9) The candidate's phone number;

(10) The candidate's admission date;

(11) the candidate's grade point average; and

(12) The candidate's total hours prior to admission to the institution's educator preparation program.]

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: September 19, 2011

FILED WITH LRC: November 7, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2011 at 9:00 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 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, 2012. 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 standards for admission to an educator preparation program.

(b) The necessity of this administrative regulation: This administrative regulation provides educator preparation programs and applicants with notice as to the minimum standards applicants must attain prior to admission to educator preparations programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards for admission to an educator preparation program.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a new minimum grade point average for admission to an educator preparation program, requires undergraduate and graduate program applicants to take skills tests in mathematics, reading, and writing, and requires initial teacher preparation programs to establish a formal application procedure for admission to the program. The amendment allows institutions to choose to either use either the Pre-Professional Skills Test or the GRE as the admissions tests. Due to ETS's decision to change the grading scale for the GRE beginning August 1, 2011, minimum scores for applicants who took the test prior to August 1, 2011 and after August 1, 2011 are included in the amendment. This amendment also institutes an annual reporting requirement for each educator preparation program that will provide the Education Professional Standards Board with data on admitted candidates.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that all certified teachers in Kentucky are proficient in reading, mathematics, and writing and that they possess the necessary skills to increase student achievement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements

for obtaining and maintaining a teaching certificate and to set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that all candidates in educator preparation programs in Kentucky possess the necessary skills to become effective educators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 Educator Preparation Institutions, any institutions seeking future accreditation for an educator preparation program, and any applicant seeking admission to an educator preparation program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 30 Educator Preparation Institutions and any institutions seeking future accreditation will have to adjust their admission standards to ensure that they meet the standards required by this amendment and applicants will have to meet the minimum standards delineated in the amendment prior to admission to an educator preparation program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment should not impact the institutions financially. The applicant will have to bear the cost of the admission test if not provided by the institution.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will benefit from having candidates proficient in the skills necessary to be an educator. Potential candidates will benefit from a selection process that will ensure they meet a minimum level of competency for the education profession prior to engaging in coursework.

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

(a) Initially: There should be no additional cost to the Education Professional Standards Board.

(b) On a continuing basis: There should be no additional cost to the Education Professional Standards Board.

(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 fees are associated with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this amendment.

(9) TIERING: Is tiering applied? No, all educator preparation programs and applicants will 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? Public colleges and universities, the Education Professional Standards Board, and the 174 school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028.

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

There should be no cost to any government agency.

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

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

(c) How much will it cost to administer this program for the first year? There should be no additional cost to administer this program.

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

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

Revenues (+/-): No additional revenue is anticipated.

Expenditures (+/-): Educator Preparation Institutions may have to spend a minimal amount of time and capital to establish a formal application process if one is not currently established.

Other Explanation:

PERSONNEL CABINET (Amendment)

101 KAR 2:102. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201 et seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201 et seq., 2601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours. (b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual

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leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- a. Not be paid to the employee or converted to sick leave; and
- b. Be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated

annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member; or

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accu-

mulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service. ~~[(4) Workers' compensation.~~

~~(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.~~

~~(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.~~

~~(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.]~~

~~(4) [(5)] Application for sick leave and supporting documentation.~~

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to

receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit:

(a) The employee to reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) The employee to use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work

week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be

paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

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Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

- (a) Charged to annual or compensatory leave;
- (b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or
- (c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety; and

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

- (a) Be charged leave time for the time spent in the attempted donation; and
- (b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", March 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing

may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of classified leave available to state employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available for state classified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for classified employees on all employment leave matters.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the regulation by deleting subsection (4) Workers' compensation of Section 2 Sick leave. Currently, this section explains that sick leave may be used in order to maintain regular full salary while an employee is absent from work due to a work-related injury or illness for which the employee is receiving workers' compensation benefits. Further, the subsection proscribes treatment of workers' compensation pay benefits received while utilizing sick leave for the work-related injury or illness. The provisions contained in this subsection are duplicative of the provisions of 101 KAR 2:140, the regulation which covers the Workers' Compensation Fund and Program for state employees.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to eliminate the provisions in this regulation which are duplicative of the provisions of 101 KAR 2:140, the regulation which covers the Workers' Compensation Fund and Program for state employees. The deletion of the provisions mentioned above will reduce the possibility of future inconsistencies between the provisions 101 KAR 2:102 and 101 KAR 2:140, since currently both regulations house the same information in two different places.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(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 eliminating the superfluous provisions of this regulation which relate to workers' compensation. After the amendment of this regulation, all title 101 regulatory pro-

visions relevant to workers' compensation will be contained in 101 KAR 2:140.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees are subject to the provisions of 101 KAR 2:102.

(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 are required to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since there are no actions required to comply with the amendment, there are no additional costs anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. All merit, classified employees 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? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and KRS 18A.110(7)(g).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET (Amendment)

101 KAR 2:140. Workers' Compensation Fund and Program.

RELATES TO: KRS 18A.110(7)(i), 18A.370, 18A.375, 18A.380, 342.640

STATUTORY AUTHORITY: KRS 18A.030(2)(i), 18A.110(7)(i), 18A.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(i) requires the Secretary of Personnel to promulgate administrative regulations to implement programs to provide for the safety, health and welfare of state employees. KRS 18A.380 requires the cabinet to promulgate administrative regulations for the administration of the state employee workers' compensation fund established by KRS 18A.375. This administrative regulation establishes requirements for the workers' compensation fund and program for state employees.

Section 1. Workers[Workers] Compensation Fund. The self-insured workers' compensation fund and program established by KRS 18A.375(1) shall cover all eligible employees.

Section 2. Eligibles. (1) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program.

(2) Other state related groups shall be included upon written agreement with the Personnel Cabinet.

Section 3. Assessments. The assessment for an individual agency shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(1) A biennial actuarial study shall be carried out to insure the fund's fiscal soundness.

(2) A fund deficit shall be recouped through an interim billing or additional assessment if deemed necessary by an actuarial study.

Section 4. Benefits. (1)(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication, shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if he is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in subparagraph 2 of this paragraph, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(2) For an absence due to illness or injury for which workers' compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated [sick] leave may be used in order to maintain regular full salary. An employee electing to utilize accumulated leave shall complete and submit a Workers' Compensation Request to Use Accumulated Leave Form WCF-2 to the employee's supervisor. If paid accumulated[sick] leave is used, workers' compensation pay benefits shall be remitted to the employee's agency[assigned back to the state] for whatever period of time an employee received paid [sick] leave. An employee shall not receive paid [sick] leave and workers' compensation pay for the same period of time.

(3) An employee's total compensation, by workers' compensation benefits, unemployment insurance benefits, use of accrued leave, or otherwise, shall not exceed 100 percent of the employee's regular salary.

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Section 5. Notification Procedures. (1) Employee requirements. An employee shall inform the supervisor of an injury as soon as physically able to do so.

(2) Supervisor requirements.

(a) The supervisor shall:

1. Complete the employer's first report of injury, IA-1, giving specific information about the injury; and

2. Submit the form to the designated office in the agency within three (3) working days after the supervisor is notified of an injury to insure timely payments to the injured employee.

(b) A Lost Time and Return to Work Form, WCF-1, shall be submitted by the employee or the employee's representative to the supervisor if an employee is losing time from work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that a WCF-1 form shall be submitted to the Personnel Cabinet.

(c) Each medical bill, or medical information regarding treatment of a job-related injury or illness of the employee, shall be submitted in the same manner as an injury report. An injury report shall be submitted~~forwarded~~ as soon as possible.

(d) A safety representative in each agency shall be notified of each accident so that the representative may review accident causes and provide safety training. A supervisor shall promote safety with employees.

Section 6. Recordkeeping. All records maintained by the Personnel Cabinet and by an agency with respect to an employee claim under this administrative regulation shall be confidentially maintained.

Section 7. Agency Withdrawal and Readmission to Program.

(1) If an agency included in the fund as a result of the employment of persons defined in KRS 18A.370 desires to withdraw from the program, the agency shall provide the Personnel Cabinet with written notice of its intent to withdraw no later than thirty (30) calendar days prior to the end of the current fiscal year. If the notice is timely submitted, the agency may elect to withdraw at the end of the current fiscal year.

(2) An agency which withdraws from the program may be re-admitted to the program at the discretion of the Personnel Cabinet, based on compliance with the provisions in subsections (3), (4), and (5) of this section.

(3) As a condition of withdrawal, the agency shall reimburse the Commonwealth for all claims incurred by its employees, but not reported to the fund prior to the effective date of withdrawal, without regard to the length of time after the withdrawal date that the claims are actually received by the Personnel Cabinet.

(a) The Commonwealth shall bill the agency on a quarterly basis for the cost of claims that were incurred but not reported as of the date of withdrawal until all claims have been submitted and processed; and

(b) The agency shall reimburse the Commonwealth within thirty (30) calendar days of receipt of the itemized statement of payments made on the agency's behalf.

(4) If an agency that has withdrawn from the program desires to seek readmission to the fund, the Personnel Cabinet may restore the agency to the fund upon review and evaluation of the agency's claims and payment history.

(5) If the Personnel Cabinet approves the agency's restoration to the fund, the Personnel Cabinet shall assess a premium based on:

(a) Claims experience over the preceding three (3) years; and

(b) The current number of employees in the agency.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) First Report of Injury Form IA-1, February 1995; and

(b) Lost Time and Return to Work Form WCF-1, November 2011~~1995~~.

(c) Workers' Compensation Request to Use Accumulated Leave Form WCF-2, November 2011.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 501 High Street, 3rd Floor~~200-Fair Oaks Lane, 5th Floor~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the administration of the state employee workers' compensation fund and program established by KRS 18A.375.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer the workers' compensation fund established by KRS 18A.375.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 18A.110(7)(i), the Personnel Cabinet Secretary is required to promulgate administrative regulations to implement programs to provide for the safety, health and welfare of state employees. KRS 18A.380 requires the Personnel Cabinet to promulgate administrative regulations for the administration of the state employee workers' compensation fund established by KRS 18A.375.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for state employees with respect to matters relating to workers' compensation benefits. This administrative regulation establishes requirements for the workers' compensation fund and program for state employees.

(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 that an employee may use any type of accumulated leave, rather than accrued sick leave, in order to maintain regular full salary while absent from work due to a work-related injury or illness. Additionally, the Workers' Compensation Request to Use Accumulated Leave Form, WCF-2, is incorporated by reference. An employee must complete the WCF-2 prior to utilizing paid leave while receiving workers' compensation benefits and provides information about remitting benefits while off on accrued leave. The amendment clarifies that an employee's total compensation, received through workers' compensation benefits, use of accrued leave, or otherwise, shall not exceed 100 percent of an employee's regular salary. All references to the "assignment" of workers' compensation benefits are deleted to ensure compliance with KRS 342.180, which prohibits the "assignment" of workers' compensation benefits. Lastly, the Lost Time and Return to Work Form WCF-1 has been revised to correct technical aspects of the form, to clarify when the form must be completed, and to clarify what information must be contained on the form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expressly clarify that all types of accumulated leave may be utilized by employees re-

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ceiving workers' compensation pay benefits and the handling of these benefits while utilizing paid accumulated leave. This amendment is necessary in order to ensure compliance with KRS 342.180, which prohibits the "assignment" of workers' compensation benefits, as well as to clarify that no employee shall receive benefits equally more than 100 percent of his or her salary while receiving workers' compensation benefits.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 18A.110(7)(i), the Personnel Cabinet Secretary is required to promulgate administrative regulations to implement programs to provide for the safety, health and welfare of state employees. KRS 18A.380 requires the Personnel Cabinet to promulgate administrative regulations for the administration of the state employee workers' compensation fund established by KRS 18A.375.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the administration of the workers' compensation programs by clarifying an employees' leave entitlement while receiving workers' compensation benefits. Further, the amendments clarify how an employee's receipt of accumulated leave will affect his or her worker's compensation benefits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees, as defined by KRS 18A.370, and individuals subject to the provisions of 101 KAR 2:140 will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employees receiving workers' compensation pay benefits will be required by regulation to complete the Workers' Compensation Request to Use Accumulated Leave Form WCF-2 if they elect to use accumulated leave while receiving benefits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. All 18A employees 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? All state agencies with "state employees" as established by KRS 18A.370.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2)(i), KRS 18A 110(7)(i), KRS 18A.375, and KRS 18A.380.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET (Amendment)

101 KAR 3:015. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201 et seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 U.S.C. 201 et seq., 2601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service

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prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount	37.5 hour week equivalent
0-59	30 workdays	225 hours
60-119 months	37 workdays	277.50 hours
120-179 months	45 workdays	337.50 hours
180-239 months	52 workdays	390 hours
240 months and over	60 workdays	450 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) 1. If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumu-

lated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

- He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
- The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for 240 months of service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

- Is unable to work due to medical, dental, or optical examination or treatment;
- Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;
- Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member; or
- Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave,

during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff, or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

3. Is unable to return to his former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

~~[(4) Workers' compensation.~~

~~(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.~~

~~(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.~~

~~(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.]~~

~~(4) (5) Application for sick leave and supporting documentation.~~

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601 et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate

compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work-week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be;

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days speci-

fied in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize three (3) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10. Absence Without Leave. (1) An employee who is

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absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

- (a) Be considered absence without leave;
 - (b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act; and
 - (c) Constitute grounds for disciplinary action.
- (3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard, or ice storm, shall have the time of his absence reported as:

- (a) Charged to annual or compensatory leave;
- (b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or
- (c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available. (b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety; and

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

- (a) Be charged leave time for the time spent in the attempted donation; and
- (b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", March 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 11 am.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:30 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of leave available to unclassified state employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available for state unclassified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for classified employees on all employment leave matters.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the regulation by deleting subsection (4) Workers' compensation of Section 2 Sick leave. Currently, this section explains that sick leave may be used in order to maintain regular full salary while an employee is absent from work due to a work-related injury or illness for which the employee is receiving workers' compensation benefits. Further, the subsection proscribes treatment of workers' compensation pay benefits received while utilizing sick leave for the work-related injury or illness. The provisions contained in this subsection are duplicative of the provisions of 101 KAR 2:140, the regulation which covers the Workers' Compensation Fund and Program for state employees.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to eliminate the provisions in this regulation which are duplicative of the provisions of 101 KAR 2:140, the regulation which covers the Workers' Compensation Fund and Program for state employees. The deletion of the provisions mentioned above will reduce the possibility of future inconsistencies between the provisions 101 KAR 3:015 and 101 KAR 2:140, since currently both regulations house the same information in two different places.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations con-

sistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(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 eliminating the superfluous provisions of this regulation which relate to workers' compensation. After the amendment of this regulation, all title 101 regulatory provisions relevant to workers' compensation will be contained in 101 KAR 2:140, which also applies to unclassified employees pursuant to 101 KAR 3:050 Section 8.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Chapter 18A unclassified employees are subject to the provisions of this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since there are no actions required to comply with the amendment, there are no additional costs anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue that do not otherwise exist.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. All unclassified employees are treated the same.

FISCAL NOTE EON STATE OR LOCAL GOVERNMENT

Contact Person: Dinah T. Bevington

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2) and KRS 18A.110(7)(g).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments within this regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board Of Barbering (Amendment)

201 KAR 14:180. License fees, examination fees, renewal fees, and expiration fees.

RELATES TO: KRS 317.410(8), 317.450

STATUTORY AUTHORITY: KRS 317.440(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(2) requires the Board of Barbering to establish fees for licenses within the limits established by KRS 317.450. This administrative regulation establishes fees relating to barbering licenses.

Section 1. Initial licensing fees shall be as follows:

(1) Apprentice license: fifty (50)~~[forty-(40)]~~ dollars;

(2) Barber license: fifty (50)~~[forty-(40)]~~ dollars;

(3) Endorsement: \$250;

(4) Barber shop license: fifty (50) dollars;

(5) ~~[(4)]~~ Barber school license: \$150;

~~[(5)]~~ Teacher of barbering license: \$100~~[fifty-(50)]~~ dollars; and

(7) ~~[(6)]~~ Independent contract owner: fifty (50)~~[forty-(40)]~~ dollars.

Section 2. Examination fees shall be as follows:

(1) Apprentice examination: \$150~~[\$125]~~;

(2) Barber examination: \$150~~[\$125]~~; and

(3) Teacher of barbering examination: \$150~~[\$125]~~.

Section 3. Renewal fees shall be as follows:

(1) Apprentice renewal: fifty (50)~~[forty-(40)]~~ dollars;

(2) Barber renewal: fifty (50)~~[forty-(40)]~~ dollars;

(3) Teacher of barbering renewal: fifty (50)~~[forty-(40)]~~ dollars;

(4) Barber shop renewal: fifty (50)~~[forty-(40)]~~ dollars;

(5) Barber school renewal: \$150~~[forty-(40)]~~ dollars; and

(6) Independent contract owner: fifty (50)~~[forty-(40)]~~ dollars.

Section 4. (1) The late fee for renewal of a license that has been expired for more than thirty-one (31) days and not more than five (5) years from the expiration date of the last license issued by the board shall be as follows:

(a) Apprentice late fee: twenty-five (25) dollars;

(b) Barber late fee: twenty-five (25) dollars;

(c) Teacher of barbering late fee: twenty-five (25) dollars;

(d) Barber shop late fee: twenty-five (25) dollars;

(e) Barber school late fee: twenty-five (25) dollars; and

(f) Independent contract owner: twenty-five (25) dollars.

(2) The total cost of renewal of a license governed by subsection (1) of this section shall include the renewal fee and the:

(a) Late fee established by subsection (1) of this section; and

(b) Lapse fee defined by KRS 317.410(8)~~[317.410(6)]~~.

HARTSEL H. STOVALL, Chair

VOLUME 38, NUMBER 6 – DECEMBER 1, 2011

APPROVED BY AGENCY: November 7, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 a.m. (EST) at 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall 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, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Karen Greenwell, Administrator, Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, phone (502) 429-7148, fax (502) 429-7149.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees relating to barbering licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the licensees of the fee amounts related to barbering including license fees, endorsement fees, examinations fees, renewal fees and expiration fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes fees for licenses within the limits established by KRS 317.450.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to inform the licensees of the fee amounts related to barbering including endorsement fees for those desiring to relocate to the state of Kentucky and continue their barbering career in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment will inform those who currently hold barber licenses as well as those desiring to become barbers in the state of Kentucky of the increase in licensing fees. It will further clean up the regulation by establishing the fee for endorsement, which is authorized by KRS 317.450(1)(b) but through oversight, failed to be included when 201 KAR 14:180 was put into effect in 1999.

(b) The necessity of the amendment to this administrative regulation. This amendment is necessary to inform those who currently hold barber licenses as well as those desiring to become barbers in the state of Kentucky through endorsement of the required licensing fees.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 317.440(2), the board is required to establish fees for licenses within the limits established by KRS 317.450.

(d) How the amendment will assist in the effective administration of the statutes: By informing those who currently hold barber licenses as well as those desiring to become barbers in the state of Kentucky of the required licensing fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The increase in initial license fees will affect approximately 90 licensed barbers, 130 licensed apprentices, 3 licensed instructors, 15 individuals seeking endorsement and 120 independent contract owners. The increase in examination fees will affect approximately 245 apprentice and barber examinees and 15 instructor examinee applicants annually. The increase in license renewal fees will affect approximately 2,700 barbers, 80 apprentice-

es, 35 instructors, 730 independent contract owners, 1,025 shops and 8 schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation amendment, the licensees identified in question (3) will have an increased licensing fee.

(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 an additional cost of \$10 for the initial licensing fee for the apprentice, barber and independent contract owners. There will be an additional cost of \$50 for the initial licensing fee for instructors. There will be an additional cost of \$25 for the examination fees for apprentice, barber and instructors. There will be an additional cost of \$110 for the barber college renewal fee, increasing the renewal fee from \$40. It is important to note that the renewal fee for barber colleges was \$75 from 1971 through 1990. In 1991 the renewal fee for barber colleges was increased to \$100 and remained at that rate through 1998. In 1999 201 KAR 14:180 went into effect and at that time the renewal fee for barber colleges went to \$40. The Board feels this was an oversight and that the increase of this license fee is necessary and reasonable. There will be an additional cost of \$10 for the renewal fee for the apprentice, barber, independent contract owners, shops and instructors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will continue to have the service of the Kentucky Board of Barbering including but not limited to the agency being available to: answer licensees' questions in a timely manner, aid in requests to license new barber shops, provide information needed to comply with the statutes and regulations pertaining to the licensing of new barber colleges in the state of Kentucky, assist those applying for the instructor exam as well as those applying for endorsement or reciprocity with other states, help barbers who are relocating to the commonwealth through endorsement, offering support to barber colleges by tracking enrollments, attendance and aiding in the application process for examination.

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

(a) Initially: There will be no additional cost to implement this administrative regulation as the licensees were previously notified that the board would be requesting a license fee increase in the annual newsletter that was mailed individually to each licensed barber and apprentice in May, 2011. The board will use the annual newsletter to remind the licensees of the increase in license fees. The annual newsletter is not an additional cost to the agency as it has been included in the budget.

(b) On a continuing basis: There will be no cost to implement 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: There will be no cost 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 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 establishes the fee for endorsement that is authorized by KRS 317.450(1)(b) but by oversight was not included in KRS 317.180 and will increase fees as stated in question (4)(b) above.

(9) Tiering: Is tiering applied? Tiering was not used because all licensees will 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

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2. What 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 the Kentucky Board of Barbering and those licensed by the Kentucky Board of Barbering including those applying for endorsement and (8) barber colleges pursuant to KRS 317.450.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Kentucky Board of Barbering authorizes the action taken by administrative regulation pursuant to KRS 317.440(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$57,000 in needed additional revenue for the Kentucky Board of Barbering 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? Approximately \$57,000 in needed additional revenue for the Kentucky Board of Barbering will be generated for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer this administrative regulation amendment 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: Please note that the administrative regulation amendment to 210 KAR 14:180 will create needed additional revenues for the operation of the agency as specified in (4)(a) and (b) above however, this amendment will not create any new expenditures for the agency or State Government as the licensees were previously notified that the board would be requesting a license fee increase in the annual newsletter that was mailed to each licensed barber and apprentice barber individually in May, 2011. The board will use the annual newsletter to remind the licensees of the fee increase. The expenses for the annual newsletter have been included in the budget therefore there are no additional costs to the agency established by the administrative regulation amendment to 201 KAR 14:180.

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:085. Licensure periods and miscellaneous requirements.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071 requires the board to establish licensure periods for licenses issued by the board. This administrative regulation establishes the licensure periods. It also provides for miscellaneous requirements.

Section 1. (1) A nursing license or credential issued during the first seven (7) months of a licensure period shall expire at the end (October 31) of the current licensure period.

(b) issued during the last five (5) months of a licensure period shall expire at the end (October 31) of the succeeding licensure period.

Section 2. Licensure Periods. (1) The licensure period for all licenses and credentials, except for provisional, inactive, and re-

tired status licenses, shall be for one (1) year beginning on November 1.

Section 3. For the purposes of the practice of nursing, a nurse shall use the name under which he or she is licensed with the board of nursing.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011.

FILED WITH LRC: November 8, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel
Kentucky Board of Nursing 312 Whittington Parkway, Suite 300
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets licensure periods.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting licensure periods.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting licensure periods.

(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 changes the title to add a miscellaneous requirement concerning the name a nurse is to use. Nurses often change their names due to marriage or divorce. The amendment clarifies longstanding practice that a nurse must use the name in which they are licensed for purposes of the practice of nursing, until they change that name with the Board.

(b) The necessity of the amendment to this administrative regulation: The Board gets numerous questions concerning this issue and has advised nurses for many years of this policy. A recent incident indicated the need to place this policy in regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set these requirements.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying in regulation the appropriate name.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses with name changes, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to use the appropriate

name or make a change with the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a fee of \$25 to make a name change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board Of Nursing (Amendment)

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

RELATES TO: KRS 314.041(1)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. This administrative regulation establishes the organization and admin-

istration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definition. (1) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse and includes secondary or distance learning sites, if applicable.

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program who is qualified pursuant to 201 KAR 20:310;

2. Effective July 1, 2010, assure that at least fifty (50) percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing, up to 100 percent.

a. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

(i) The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

(ii) If the exemption is granted, it shall be for one (1) academic year. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing.

b. The program administrator's time to be dedicated to completion of the duties specified in this administrative regulation shall not be less than twenty five (25) percent for each program of nursing;

3. Establish administrative policies;

4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

5. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

6. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

7. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

8. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, promotion, retention, and tenure;

9. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

10. Provide for the security, confidentiality, and integrity of faculty employment records

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a vacancy or pending vacancy in the position of the program administrator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

1. The effective date of the vacancy;
2. The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae;

3.a. If there is to be a lapse between the date of the vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to insure the continuity of the program.

b. Progress reports shall be submitted if requested by the board;

4.a. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position; and

5.a. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.

b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Within thirty (30) days of appointment to, submit the qualifications of all nurse faculty and clinical instructors;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate [and] the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporate the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h)1. To coordinate the development and negotiation of contracts with clinical facilities. Coordinates the development and negotiation of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes; and

2. To coordinate the development of selection and evaluation criteria for clinical facilities and ensure that the criteria shall be utilized by the program of nursing;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or preceptor experiences. Observational experiences shall include an assignment for which a student shall observe nursing and shall not participate in direct patient or client contact but shall have access to a clinical instructor as needed.

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma or certificate;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies shall be current and replaced in a timely manner;

(n) To ensure that the nurse faculty shall have sufficient time to accomplish those activities related to the teaching-learning process;

(o) To coordinate of an orientation to the roles and responsibilities of full-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials shall provide accurate and complete information to prospective students about the program including the:

1. Nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

2. Length of the program;

3. Current cost of the program; and

4. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend a Board of Nursing Program Administrators Orientation within one (1) year of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program; and

(w) To ensure that the curriculum shall be implemented as submitted to the board;

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings. These records shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the requirements established in 201 KAR 20:310, orientation to the governing institution and the program of nursing; and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures;

(c) A description of student services;

(6) Clerical assistance.

1. The number of clerical assistants shall be determined by the number of students and faculty.

2. There shall be secretarial and clerical assistants sufficient to meet the needs of the nursing program for the administrator, faculty, and students at the designated primary location, as well as clerical support for secondary and distance learning sites, if applicable. (7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools to measure the progression of the student's cognitive, affective, and psychomotor achievement in course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Establish clinical outcomes within the framework of the course;

(j) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(k) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis; and

(l) Evaluate the student's experience, achievement, and progress in relation to course or outcomes, with input from the clinical instructor and preceptor, if applicable; and

(8) Clinical instructors with governance to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor;

2. The course responsibilities;

3. The course or clinical outcomes;

4. A course evaluation tool; and

5. Situations in which collaboration and consultation are needed; and

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes.

Section 3. Notification of Increased Enrollment. (1) A program of nursing shall notify the board of an increase in enrollment by ~~more than~~ twenty (20) percent or more of the last cohort enrolled or ten (10) [thirty (30)] students, whichever is greater.

(a) The notification shall be sent in writing not later than six (6) months [one (1) full term] prior to the increase.

(b) The notification shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment.

(2) The board shall conduct a site visit to determine if the program has sufficient resources.

(3) The board shall not grant approval for the increase in enrollment unless the program has:

(a) full approval status, and

(b) program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011

FILED WITH LRC: November 8, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for prelicensure programs of nursing for RNs and LPNs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the method for determining when a program must request approval for an increase in enrollment and what standards the Board should review before approving the request.

(b) The necessity of the amendment to this administrative regulation: The previous standard on increase in enrollment proved to be difficult to understand and implement. This amendment clarifies that process.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set these standards.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the standard.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN prelicensure programs of nursing, presently there are 101.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to request approval for an increase in enrollment that meets the standards set forth in the 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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board Of Nursing (Amendment)

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.041(1), 314.051(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. This administrative regulation establishes the standards to be met by students in those programs.

Section 1. Students in Programs of Nursing. (1) The number of students admitted to the program of nursing shall be determined by the number of qualified faculty, adequate educational facilities, resources, and appropriate number of clinical learning experiences for students.

(2) Admission requirements and practices shall be stated and published in the governing institution's publications and shall include an assessment of achievement potential through the use of previous academic records and, if applicable, the use of preadmission examination scores consistent with curriculum demands and scholastic expectations.

(3) Program information communicated by the program of nursing shall be accurate, complete, consistent, and publicly available.

(4) Participation shall be made available for students in the development, implementation, and evaluation of the program.

(5) Programs of nursing shall post the Board of Nursing approval status:

(a) In a physical location that is able to be seen and accessible to students, faculty, staff, and the general public; and

(b) On the program's web site.

Section 2. Student Policies. (1) Student policies of the program of nursing shall be congruent with those of the governing institution. Any difference shall be justified by the program of nursing.

(2) Program of nursing student policies, recruitment, and advertising shall be accurate, clear, and consistently applied.

(3) Upon admission to the program of nursing, each student shall be advised in electronic or written format of policies pertaining to:

(a) Approval status of the program as granted by the board;

(b) Policies on admission, transfer or readmission, advanced or transfer placement, withdrawal, progression, suspension, or dismissal;

(c) Evaluation methods to include the grading system;

(d) Fees and expenses associated with the program of nursing and refund policies;

(e) Availability of counseling resources;

(f) Health requirements and other standards as required for the protection of student health;

(g) Grievance procedures;

(h) Program of study or curriculum plan;

(i) Financial aid information;

(j) Student responsibilities;

(k) Student opportunities to participate in program governance and evaluation; and

(l) Information on meeting eligibility for licensure.

(4) A plan for emergency care during class or clinical time shall be in writing and available to faculty and students.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011

FILED WITH LRC: November 8, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011, five

workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for students in prelicensure programs of nursing for RNs and LPNs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment requires a program of nursing to post its Board approval status in a physical location at the school and on its web site.

(b) The necessity of the amendment to this administrative regulation: Since there are different levels of approval status, the public, particularly potential students, need to be informed.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set these standards.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the standard.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN prelicensure programs of nursing, presently there are 101.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to post their approval status at the school and on their web site.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board Of Nursing (Amendment)

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131

STATUTORY AUTHORITY: KRS 314.131(1), (9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) and (9) authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records may be expunged and the procedure for expungement.

Section 1. Definition. "Expungement" means that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A nurse whose record has been expunged may properly reply that disciplinary records do not exist upon inquiry.

Section 3. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least five (5) years old provided that all the terms of the consent decree have been met.[-; and]

(2) Agreed orders and decisions that are at least ten (10) years old and which concern one (1) or more of the following categories, provided that there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met:

(a) Failed to timely obtain continuing education or AIDS education hours;

(b) Paid fees that were returned unpaid by the bank; or

(c) Practiced as a nurse or advanced practice registered nurse without a current license, provisional license, or temporary work permit.

(3) Agreed orders and decisions that are at least ten (10) years old and which resulted in a reprimand, provided that there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

(4) Agreed orders and decisions that are at least twenty (20) years old, provided that there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

Section 4. The board shall not report cases that have been expunged to another state agency, other board of nursing, or other organization.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011.

FILED WITH LRC: November 8, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for the expungement of certain disciplinary orders.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies when a category of disciplinary orders may be expunged by adding that the terms of the order have been met.

(b) The necessity of the amendment to this administrative regulation: This particular provision appears in the other categories of records that may be expunged and applies to this category as well.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set these standards.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the standard.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses requesting expungement, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

They will have to have met the terms of the order to be expunged.

(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 other than what may be involved with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Authority (Amendment)

201 KAR 27:011. General requirements for boxing and kickboxing shows.

RELATES TO: KRS 229.021, 229.071, 229.081, 229.091, 229.101, 229.131, 229.171, 15 U.S.C. 6304

STATUTORY AUTHORITY: KRS 229.180(1)

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. KRS 229.071(2) authorizes the authority to grant annual licenses to applicants for participation in professional matches if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to administrative regulations promulgated by the authority. 15 U.S.C. 6304 requires a promoter to provide medical insurance for any injuries sustained in a match. This administrative regulation establishes the general requirements for boxing and kickboxing shows.

Section 1. (1) The authority shall license all persons approved to participate as contestants in a boxing or kickboxing show.

(2) A participant shall apply for a license at the show site after preflight physicals have been performed.

(3) An application shall only be mailed to the authority if the applicant is over thirty-nine (39) years old and a comprehensive physical is required pursuant to Section 35 of this administrative regulation.

(4) A license shall expire on December 31 of the year in which it is issued.

Section 2. (1)(a) An applicant for a boxing license shall complete and submit to the authority the form "Application for License as a Boxer", (11/2011).

(b) A copy of the applicant's picture identification or birth certificate shall be submitted with the application.

(2) The license fee for each participant shall be as follows:

(a) For boxers and kickboxers - twenty (20) dollars

(b) For a boxer's federal identification card, pursuant to 15 U.S.C. 6305(a) and (b) - ten (10) dollars. This identification is valid for two (2) years from the date issued. To obtain a boxer's federal identification card, an applicant shall complete and submit to the authority the form "Boxer's Federal Identification Card Application".

Section 3. (1) A promoter of a boxing or kickboxing show shall request a show date by completing and submitting to the authority the form "Boxing Show Notice Form", (11/2011).

(2) The form shall be submitted to the authority for approval no less than thirty (30) calendar days before the requested show date.

(3) There shall be no advertising of the event prior to the approval.

(4) Upon approval by the authority, all advertisements shall include promoter's the license number.

Section 4. Before the commencement of the main event of any boxing or kickboxing show or exhibition, a promoter of a show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 3 of this administrative regulation.

Section 5. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a boxing or kickboxing show shall be as follows:

(1) Judges for boxing or kickboxing shows: seventy-five (75) dollars each.

(2) Timekeeper for boxing or kickboxing shows: seventy-five (75) dollars.

(3) Physician for boxing and kickboxing show:

(a) \$300 up to ten (10) scheduled bouts;

(b) \$350 eleven (11) to fifteen (15) scheduled bouts; or

(c) \$400 over fifteen (15) scheduled bouts.[\$250].

(4) Referees for boxing and kickboxing shows: \$100 each.

Section 6. If a show or exhibition is cancelled, with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by Section 5 of this administrative regulation.

Section 7. (1) The proposed card for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be immediately filed with the authority.

(2) If the Authority determines, after reviewing a contestant's fight history that a proposed bout may not be reasonably competitive, the bout shall be denied.

Section 8. All contestants' compensation agreements shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 9. (1) Before the commencement of a show, all changes or substitutions in the card shall be:

(a) Announced from the ring; and

(b) Posted in a conspicuous place at the ticket office.

(2) In the event of a change in the card, a purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the tickets, provided the request is made before the commencement of the show.

Section 10. Within twenty-four (24) hours of the conclusion of a show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form, "Boxing Event Report" (2/06).

Section 11. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the Authority.

(2) Alcohol or smoking shall not be allowed in the areas under the control of the Authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the Authority.

(4) Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

(5) A ring must have a canvas mat. ~~[The area between the ring and the first row of spectators on all four (4) sides shall be under the exclusive control of the authority. No alcohol or smoking shall be allowed in the area under the control of the authority.]~~

Section 12. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.

(2) A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for boxers and kickboxers to enter the ring and the spectator area.

Section 13. The ring specifications shall be as follows:

(1) A bout shall be held in a four (4) sided roped ring with the following specifications:

(a) The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;

(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

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(b) A fourth rope may be used if it is approved by the inspector or employee of the authority prior to the commencement of the show:

- (c) The ropes shall be at least one (1) inch in diameter;
- (d) The ropes shall be wrapped in a clean, soft material and drawn taut;
- (e) The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.
- (3) The ropes shall be supported by ring posts that shall be:
 - (a) Made of metal or other strong material;
 - (b) Not less than three (3) inches in diameter;
 - (c) At least eighteen (18) inches from the ropes.
- (4) The ring floor shall be padded or cushioned with a clean, soft material that:
 - (a) Is at least one (1) inch in thickness using thick slow recovery foam matting;
 - (b) Extends over the edge of the platform; and
 - (c) 1. Is covered with a single canvas or a similar material stretched tightly; and
 - 2. Is clean, sanitary, dry, and free from:
 - a. Grit;
 - b. Dirt;
 - c. Resin;
 - d. Blood; and
 - e. Any other foreign object or substance.
- (5) A ring rope shall be attached to a ring post by turnbuckles that are padded with a soft vertical pad at least six (6) inches in width.

Section 14. A bell or horn shall be used by the timekeeper to indicate the time.

Section 15. In addition to the ring and ring equipment, the promoter shall supply the items listed in this section, which shall be available for use as needed.

- (1) A public address system in good working order.
- (2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the ring and the ring floor.
- (3) Items for each contestant's corner, to include:
 - (a) A stool or chair;
 - (b) A clean bucket;
 - (c) Towels; and
 - (d) Rubber gloves.
- (4) A complete set of numbered round-cards, if needed.
- (5) A clean stretcher and a clean blanket, placed under or adjacent to the ring throughout each bout.
- (6) First aid oxygen apparatus or equipment.
- (7) Gloves for each boxer or kickboxer.

Section 16. A scale used for any weigh-in shall be approved in advance by the inspector or employee of the authority.

Section 17. A promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted and the locker rooms to ensure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 18. (1) Emergency medical personnel and portable medical equipment shall be stationed at ringside during the event.

(2) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests.

(3) If the ambulance is required to leave the event for any reason, no boxing or kickboxing shall be allowed to continue until an ambulance is once again present and medical personnel are at ringside.

Section 19. (1) There shall be at least one (1) physician licensed by the authority at ringside before a bout is allowed to begin.

(2) The physician shall have at ringside any medical supplies reasonably anticipated to provide first aid medical assistance for

the type of injuries reasonably anticipated to occur in a boxing or kickboxing contest.

Section 20. (1) A promoter shall provide health insurance for the boxer or kickboxer for any injuries sustained in the boxing event.

(2) The minimum amount of coverage per boxer or kickboxer shall be \$5,000 benefits. Payment of any deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$300. Any deductible expense above \$300 shall be the responsibility of the promoter.

(3) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

Section 21. All judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

- (1) Three (3) judges;
- (2) One (1) timekeeper;
- (3) One (1) physician. Two (2) physicians shall be assigned to any bout designated a championship bout by a national sanctioning body recognized by the authority; and
- (4) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 22. Decisions shall be rendered as follows:

(1) If a contest lasts the scheduled limit, the winner of the contest shall be decided by:

- (a) A majority vote of the judges if three (3) judges are employed to judge the contest; or
- (b) A majority vote of the judges and the referee if two (2) judges are employed to judge the contest.

(2) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

- (a) Clean, forceful hitting;
- (b) Aggressiveness;
- (c) Defensive work; and
- (d) Ring generalship.

Section 23. Scoring shall be as follows:

(1) Each round in boxing or kickboxing shall be accounted for on the scorecard, using the ten (10) point must system. Scoring shall be expressed in ratio of merit and demerit.

- (2) Score cards shall be:
 - (a) Signed;
 - (b) Handed to the referee in the ring; and
 - (c) Filed by him with the inspector or employee of the authority in attendance.
- (3) The decision shall then be announced from the ring.

Section 24. Bouts and rounds shall be as follows:

- (1) Boxing or kickboxing rounds shall:
 - (a) Be of either two (2) or three (3) minutes duration; and
 - (b) Have not less than a one (1) minute rest period between rounds.
- (2) A boxing or kickboxing bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

Section 25. Boxing gloves shall meet the requirements established in this section.

(1) For boxing, contestants shall wear boxing gloves which shall be of the same weight for each contestant and:

- (a) Dry, clean, and sanitary;
- (b) Furnished by the promoter;
- (c) Of equal weight, not to exceed twelve (12) ounces;
- (d) A minimum of eight (8) ounces for a contestant weighing no more than 154 pounds;
- (e) A minimum of ten (10) ounces for a contestant weighing over 154 pounds; and
- (f) Thumbless or thumb-attached.

(2) For kickboxing, contestants shall wear boxing gloves which shall be of the same weight for each contestant and:

- (a) Clean and sanitary;
- (b) Furnished by the promoter;
- (c) Of equal weight, not to exceed twelve (12) ounces;
- (d) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds;
- (e) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds.

(3) Gloves shall be new for main events and for contests and exhibitions scheduled for ten (10) or more rounds.

(4) Gloves shall be thumbless or thumb-attached gloves approved by the authority.

(5) Kickboxing contestants shall wear padded kickboxing boots approved by the authority.

(6) Gloves for all main events shall be dry and free from defects and shall be put on in the ring, subject to the discretion of the inspector or employee of the authority.

(7) Breaking, roughing, or twisting of gloves shall not be permitted.

(8) The laces on gloves shall be tied on the back of the wrist and taped.

Section 26. Bandages shall meet the requirements set forth in this section.

(1) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(2) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(3) Medical adhesive tape not more than one (1) inch in width may be used to hold bandages in place.

(4) Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch.

(5) Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection.

(6) Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(7) Hand wraps shall be applied in the dressing room in the presence of an inspector, official or employee of the authority. The inspector, official or employee of the authority shall sign the hand wrap and the tape around the strings of the gloves.

Section 27. The requirements governing knockdowns shall be as follows:

(1) If a contestant is knocked to the floor by his opponent, or falls from weakness or other causes, his opponent shall:

(a) Immediately retire to the farthest neutral corner of the ring; and

(b) Remain there until the referee completes his count or signals a resumption of action.

(2) The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm when the contestant is down.

(3) The referee shall pick up the count from the timekeeper.

(4) If a contestant fails to rise to his feet before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

(5) If a contestant who is down rises to his feet during the count, the referee may, if he deems it necessary, step between the contestants long enough to assure himself that the contestant just arisen is in condition to continue the bout.

(6) If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he left off.

(7) At the discretion of the referee, a standing eight (8) count may be used.

(8) If a contestant is knocked down three (3) times during a round, the contest shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

(9) If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise

before the count of ten (10), the referee shall declare him knocked out.

Section 28. Failure to Resume a Bout. (1) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count him out the same as if he were down in that round.

(2) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his feet before the expiration of ten (10) seconds, the referee may count him out as if he were down.

Section 29. A contestant shall be considered "down" when:

- (1) Any part of his body other than his feet is on the ring floor;
- (2) He is hanging helplessly over the ropes and in the judgment of the referee, he is unable to stand; or
- (3) He is rising from the "down" position.

Section 30. (1) The following shall be considered fouls:

- (a) Hitting below the belt;
- (b) Hitting an opponent who is down or who is getting up after having been down;
- (c) Holding an opponent and deliberately maintaining a clinch;
- (d) Holding an opponent with one (1) hand and hitting with the other;
- (e) Butting with head or shoulder or using the knee;
- (f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow, and all backhand blows except for those backhand blows allowable in kickboxing;
- (g) Hitting, or flicking, with the glove open or thumbing;
- (h) Wrestling, or roughing, against the ropes;
- (i) Purposely going down without having been hit;
- (j) Deliberately striking at the part of opponent's body over the kidneys;
- (k) Use of the pivot blow, or rabbit punch;
- (l) Biting of the opponent;
- (m) Use of abusive or profane language; or
- (n) Failure to obey the referee.

(2)(a) A contestant who commits a foul may be disqualified and the decision awarded to his opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul which incapacitates his opponent.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) Any contestant committing a foul may be issued a violation by the inspector or employee of the authority.

(4)(a) If a bout is temporarily stopped by the referee due to accidental fouling, the referee, with the aid of the physician, if necessary, shall decide whether the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, he shall order the bout resumed after a reasonable time, the time to be set by the referee, but not exceeding five (5) minutes.

(5)(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the contest to be subsequently stopped, the contest shall be scored on the basis of the judges' scorecards.

Section 31. The following shall be prohibited:

- (1) "Battle royal"; and
- (2) Use of excessive grease or any other substance that may handicap an opponent.

Section 32. (1) A boxer or kickboxer who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician licensed by the authority, the authority decides the action is necessary to protect the health and welfare of the boxer.

(2) A boxer or kickboxer who has suffered six (6) consecutive defeats by knockout shall not be allowed to box again until he has been investigated by the authority and examined by a physician licensed by the authority.

(3) A boxer or kickboxer whose license is under suspension in any other jurisdiction may be allowed to participate in any boxing or kickboxing only after review and approval of the case by the inspector or employee of the authority.

(4) Any boxer or kickboxer who has been knocked out shall be prohibited from all physical contact for sixty (60) days.

(5) Any boxer or kickboxer who has suffered a technical knockout shall be prohibited from physical contact for up to thirty (30) days. In determining how many days to prohibit the contestant from physical contact, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

(6) A boxer or kickboxer shall receive a mandatory seven (7) day rest period after competing in an event. Day one (1) of the rest period shall commence on the first day following the event.

Section 33. A boxer[A-boxer] or kickboxer shall not engage in any boxing or sparring with a member of the opposite sex.

Section 34. (1) Unless special permission otherwise is granted by the authority, a boxer or kickboxer:

(a) Under nineteen (19) years of age is permitted to box or kickbox no more than six (6) rounds;

(b) Nineteen (19) years of age is permitted to box or kickbox no more than eight (8) rounds; and

(c) Twenty (20) years of age is permitted to box or kickbox no more than ten (10) rounds.

(2) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds.

(3) No person over the age of thirty-nine (39) shall box or kickbox without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled board meeting[bœut].

Section 35. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or before preflight physical. The results of these tests shall be no more than 180 days old. A person with positive test results shall not be allowed to fight.

Section 36. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 37. (1) A contestant shall produce one (1) form of picture identification.

(2) A contestant shall not assume or use the name of another and shall not change his ring name nor be announced by name other than that which appears on his license except upon approval of the inspector or employee of the authority.

(3) A contestant shall attend a pre-fight meeting as directed by a representative of the Authority.

(4) A contestant shall check in with the Authority not less than one hour prior to the event start time.

(5) A contestant shall remain in the locker room area until it is time for them to compete.

Section 38. A contestant shall be clean and neatly attired in proper ring attire and the trunks of opponents shall be of distinguishing colors.

Section 39. A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 40. A contestant shall wear shoes during a bout and the shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

Section 41. A contestant shall wear a properly fitted:

(1) Groin protector;

(2) Kidney protector, if available; and

(3) Mouthpiece.

Section 42. Whenever a contest is ended by reason of fouling or failure to give an honest exhibition of skill, as determined by the inspector, referee, or an employee of the authority, the compensation of the offending contestant shall be withheld by the promoter and shall be disposed of as may be ordered by the authority.

Section 43. (1) The authority shall request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense. If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, impose a fine upon the contestant, or both.

(2)1. The administration of or use of any of the following is prohibited in any part of the body, either before or during a contest or exhibition:

(a) Alcohol;

(b) Stimulant; or

(c) Drug or injection that has not been approved by the Authority, including, but not limited to, the drugs or injections listed in subsection 2.

2. The following types of drugs, injections or stimulants are prohibited pursuant to subsection 1:

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in subsection 4.

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in subsection 4. This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby adopted by reference. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org.

3. The following types of drugs or injections are not prohibited pursuant to subsection 1, but their use is discouraged by the Commission:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

4. The following types of drugs or injections are approved by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antilucer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

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(i) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(1) Afrin;

(2) Oxymetazoline HCL Nasal Spray; or

(3) Any other decongestant that is pharmaceutically similar to a decongestant listed in subparagraph (1) or (2).

5. An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the Authority or a representative of the Authority directs him to do so.

6. A licensee who violates any provision of this section is subject to disciplinary action by the Authority. In addition to any other disciplinary action by the Authority, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the Authority may, in its sole discretion, change the result of that contest or exhibition to a no decision.

Section 44. (1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in of a contestant competing in a bout or exhibition:

(a) Change in weight in excess of three (3) pounds is not permitted for any contestant who weighed in at 145 pounds or less.

(b) Change in weight in excess of four (4) pounds is not permitted for any contestant who weighed in at over 145 pounds.

Section 45. (1) A contestant in a show held under the jurisdiction of the authority shall weigh in stripped, at a time set by the authority.

(2) The inspector or an employee of the authority and a representative of the promoter conducting the show shall be in attendance to record the official weights.

(3) A contestant shall not be allowed to fight more than one (1) class above his weight.

Section 46. On the day of the show, the official physician shall make a physical examination of each contestant.

Section 47. If a contestant is unable to participate in a show for which he has a contract, he shall immediately notify the promoter and the authority and file with the authority a physician's certificate verifying the injury or illness or other verified evidence indicating the reasons for his failure to participate. The authority may require a contestant to submit to a medical examination.

Section 48. The promoter shall submit written notice to the nearest hospital with an on-call neurosurgeon that a boxing or kickboxing bout is being held. The notice shall include the date, time, and location of the event. A copy of this notice shall be filed

with the authority no less than two (2) business days before the event.

Section 49. The following requirements apply to all bouts between female contestants:

(1) The maximum number of rounds shall be ten (10);

(2) The length of each round shall be two (2) minutes;

(3) The rest period between rounds shall be one (1) minute;

(4) A contestant shall not wear facial cosmetics during the bout;

(5) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(6) Weight classes shall be those established in Section 42 of this administrative regulation;

(7) A contestant shall wear a properly-fitted:

(a) Breast protector;

(b) Groin protector;

(c) Kidney protector if available, and

(d) Mouthpiece;

(8) The gloves shall be properly fitted and the sizes shall be as follows:

(a) Of equal weight: not to exceed twelve (12) ounces;

(b) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds;

(c) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds; and

(9) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

(10) A promoter shall provide separate locker room(s) for females.

Section 50. A promoter shall maintain an account with the recognized national database as identified by the Authority, and submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 51. All shows shall be visibly recorded and retained by the promoter for one (1) year. Upon request of the authority, the promoter shall provide the visual recording of a show to the authority.

Section 52. All non-sanctioned activities, including but not limited to concerts, shall be completed prior to the scheduled start time of the event.

Section 53[60]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License as a Boxer", (5/06);

(b) "Boxer's Federal Identification Card Application", (5/06);

(c) "Boxing Show Notice Form", (5/06); and

(d) "Boxing Event Report", (5/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601[100 Airport Road, Frankfort, Kentucky-40601], Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE GINTER, Board Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five 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, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robertson and Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes requirements for Boxing contests.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.171(2)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for Boxing contests.

(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 pay scale for physicians, increases security, changes health insurance requirements, clarifies drug testing procedures and requirements, and adds protections for female contestants.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to protect contestants from injury.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the health of licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 871 amateur mma licensees.

(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: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal. Changes to the physician pay scale and insurance deductible payments may impact the expenses of a promoter.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Their health will be protected.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

regulation does not establish fees. It may create a greater expense for promoters relate to physician payments and health care cost payments.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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:

PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Authority (Amendment)

201 KAR 27:012. Wrestling show requirements.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171(1), 229.180(1)

STATUTORY AUTHORITY: KRS 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171 authorizes the authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. KRS 229.071(2) authorizes the authority to grant annual licenses to applicants for participation in professional matches if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations promulgated by the authority. This administrative regulation establishes the requirements for wrestling shows and for participants in wrestling matches.

Section 1. The authority shall license all persons approved to participate in wrestling. All licenses shall expire on December 31 of the year in which they are issued.

Section 2. An applicant for a wrestling license shall complete and submit to the authority the form, "Application for License as a Wrestler", (11/2011). An applicant desiring to renew a wrestling license shall complete and submit to the authority the form, "Appli-

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cation for Renewal of License as a Wrestler", (11/2011). An applicant for a wrestling event staff or referee license shall complete and submit to the authority the form, "Application for License as a Wrestling Official", (11/2011). A copy of the applicant's picture ID or birth certificate shall be submitted with any new application.

Section 3. The license fee for each participant shall be as follows:

- (1) Event staff: twenty (20) dollars
- (2) Referee: twenty (20) dollars
- (3) Wrestler: twenty (20) dollars
- (4) A wrestler certificate may be purchased for an additional ten (10) dollars.

Section 4. Requirements for the wrestling ring and the immediately surrounding area. (1) All matches shall be held in a four (4) sided roped ring with the following specifications:

- (a) The minimum ring size shall be fourteen (14) feet by fourteen (14) feet;
- (b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;
- (c) The floor of the ring may be elevated not more than six (6) feet above the arena floor; and
- (d) It may have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

- (a) There shall be three (3) ropes extended in a triple line;
- (b) The ropes shall be at least one (1) inch in diameter; and
- (c) The ropes shall be wrapped in a clean, soft material and drawn taut.

(3) The ropes shall be supported by ring posts that shall be:

- (a) Made of metal or other strong material;
 - (b) Not less than three (3) inches in diameter; and
 - (c) At least eighteen (18) inches from the rope.
- (4) The ring floor shall be padded or cushioned with a clean, soft material that:
- (a) Is at least one (1) inch in thickness;
 - (b) Extends over the edge of the platform;
 - (c) Is covered with canvas or a similar material stretched tightly; and

(d) Is clean, sanitary, and free from:

1. Grit;
2. Dirt;
3. Resin;
4. Blood; and
5. Any other foreign object or substance.

(5) The ring rope shall be attached to the ring posts by turnbuckles that are padded with a soft pad at least six (6) inches in width.

(6) The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all sides of the ring.

(7) A partition, barricade, or some type of divider shall be placed:

- (a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and
- (b) On both sides of the entry lane for wrestlers to enter the ring and the spectator area or, if an entry lane is not practical, all wrestlers shall be escorted to the ring by security.

Section 5. The promoter may request an alternate ring design consisting of more than four (4) equal sides provided that the square feet is not less than 196 square feet inside. This request shall be submitted in writing to the authority for approval no less than thirty (30) days before the show.

Section 6. (1) Before the beginning of a wrestling show, all changes or substitutions in the advertised program of wrestling shall be posted at the ticket window and at the entrance to the facility

(2) Changes or substitutions shall also be announced in the ring before commencement of the first match along with the information that any ticket holder desiring a refund based on those

announced changes or substitutions shall be entitled to receive a refund before commencement of the program.

(3) Purchasers of tickets shall be entitled, upon request by them, to a refund of the purchase price of the tickets, if the request is made before the commencement of the first match.

Section 7.. (1) A licensed wrestler who has made a commitment to participate in a professional match and is unable to participate, for any reason, shall notify the promoter of the inability to participate as soon as possible.

(2) Failure to notify the promoter in a timely manner may constitute grounds for possible disciplinary action by the authority.

Section 8. While participating in a professional match, a wrestler, referee, promoter or wrestling event staff shall not:

(1) Use, or direct another person to use, any object or tactic to intentionally cut:

- (a) Himself;
- (b) An opponent; or
- (c) Any other participant in the show.

(2) Use any pyrotechnic during the show on:

- (a) Another wrestler;
- (b) The referee; or
- (c) Wrestling event staff.

(3) Bleed while participating in an exhibition or appearing at the site of a show.

(a) If an individual accidentally bleeds while participating in an exhibition, show, or appearance, the match shall end immediately and the KBWA shall be notified within twenty-four (24) hours.

(3) [(4)] Use an object that may [An object shall not be used during a wrestling show that may] cause a person to bleed.

(4) [(5)] Use a physical or verbal threat of aggression [shall not be] directed toward any member of the audience.

Section 9. In the event that a scheduled show involves a match where blood capsules are to be used or wrestling is to take place in a substance, the promoter shall inform the authority no less than three (3) business days before the match.

Section 10. Any violation of this or any other administrative regulation that results in injury to a contestant, participant or member of the audience may result in suspension, fine, or revocation of a license, at the discretion of the authority.

Section 11. All wrestling or entertainment shall take place either in the ring or within the partitioned-off portion of the gym or arena. Physical activity shall not be permitted between wrestlers, referee, or wrestling event staff in the audience or outside of the safety partition.

Section 12. All promoters shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted, including but not limited to the locker room, to insure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault or breach of decorum on the part of any licensee at the premises is prohibited.

Section 13. (1) The promoter shall submit a request for a show date no less than five (5) calendar days before the requested date for approval by the authority.

(2) The request shall be made by completing and submitting to the authority the form, "Wrestling Show Notice Form", (2/06).

(3) There shall be no advertising of the event prior to approval.

(4) Upon approval by the authority, all advertisements shall include the promoter's license number.

Section 14. Within twenty-four (24) hours of the conclusion of the wrestling show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form, "Wrestling Event Report", (2/06).

Section 15. (1) The authority may at any time request a contestant to submit to a drug test at the contestant's expense. The presence within a contestant of controlled substances, for which

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the contestant does not have a prescription, or refusal by the contestant to submit to the test, may result in suspension, fine, or revocation of a license at the discretion of the authority.

(2) From arrival to the venue to the conclusion of the event, a contestant shall not consume, possess, or participate under the influence of alcohol or any other substance that may affect the contestant's ability to participate.

Section 16. (1) An initial applicant shall provide the Authority with a copy of a sports physical conducted by a licensed physician. This physical shall have been conducted no more than three (3) months prior to submission to the Authority.

(2) A licensee over the age of forty-nine (49) shall submit a sports physical yearly upon renewal. This physical shall have been conducted no more than three (3) months prior to submission to the Authority.

Section 17. (1) All shows shall be visually recorded and re-taped by the promoter for one (1) year.

(2) Upon request of the authority, the promoter shall provide the visual recording of a show to the authority.

Section 18. A promoter shall provide separate locker room(s) for males and females.

Section 19. A female shall not wrestle if she is pregnant.

Section 20. [46-] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for License as a Wrestler", (5/06);
- (b) "Application for Renewal of License as a Wrestler", (5/06);
- (c) "Application for License as a Wrestling Official", (5/06);
- (d) "Wrestling Show Notice Form", (5/06); and
- (e) "Wrestling Event Report", (5/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601 [1400 Airport Road, Frankfort, Kentucky 40604], Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE GINTER, Board Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robertson and Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes requirements for wrestling shows.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.081(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for wrestling shows.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides a more specific anti-drug policy, provides increased security for shows, provides protections for female wrestlers, and other changes.

(b) The necessity of the amendment to this administrative regulation: This amendment provides a more specific anti-drug policy, provides increased security for shows, provides protections for female wrestlers, and other changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the health of licensees and the others in attendance at wrestling shows.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1078 wrestlers licensed in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None. The health of the fighters will be better protected.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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:

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(Amendment)**

201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)

STATUTORY AUTHORITY: KRS 229.071(2), 229.091(1), 229.151(1), 229.171(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(2) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given with the Commonwealth. KRS 229.151(1) grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full-contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. KRS 229.071(2) authorizes the authority to grant annual licenses to applicants for participation in professional matches if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations promulgated by the authority. This administrative regulation sets out requirements for mixed martial arts contests subject to state regulation.

Section 1. (1) The authority shall license all persons approved to participate as a professional contestant in a mixed martial arts contest.

(2) Participants shall apply for license onsite after preflight physicals have been performed.

(3) Applications shall not be mailed to the authority.

(4) The license fee for each participant shall be twenty (20) dollars.

(5) All licenses shall expire on December 31 of the year in which they are issued.

Section 2. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a professional mixed martial arts show shall be as follows: Judge for mixed martial arts - \$150. If there are twelve (12) or fewer bouts on a pro/am card, the judges pay shall be \$100. Timekeeper for mixed martial arts - \$100. If there are twelve (12) or fewer bouts on a pro/am card, the timekeeper's pay shall be \$75.

(3) Physician for mixed martial arts: [-\$250-]

(a) \$300 up to ten (10) schedule bouts;

(b) \$350 eleven (11) to fifteen (15) scheduled bouts; or

(c) \$400 over fifteen (15) scheduled bouts.

(4) Referee for mixed martial arts - \$150.

Section 3. Before the commencement of the main event of any mixed martial arts show or exhibition, the promoter of the show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 2 of this administrative regulation.

Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 5. The promoter shall submit a request for a show date no less than thirty (30) calendar days before the requested date for approval by the authority. There shall be no advertising of the event prior to this approval. Once the show date has been approved, all advertisements shall include the promoter's license number.

Section 6. The proposed program for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be filed immediately with the authority.

Section 7. All contestant compensation agreements shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 8. A contest or exhibition of a mixed martial art shall be conducted pursuant to the official rules for the particular art unless it conflicts with any part of the statutes or administrative regulations. If an official rule conflicts with any part of the statutes or administrative regulations the statute or administrative regulation shall prevail. The sponsoring organization or promoter shall file a copy of the official rules with the authority along with the thirty (30) day show notice required in Section 5 of this administrative regulation.

Section 9. (1) Before the commencement of a show, all changes or substitutions shall be:

(a) Announced from the cage [ring]; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 10. (1) The area between the cage and the first row of spectators on all sides and the locker room [row nearest the ring on all four (4) sides] shall be under the exclusive control of the authority.

(2) Alcohol or smoking shall not be allowed in the areas under the control of the Authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the Authority.

Section 11. (1) There shall be an area of at least six (6) feet between the edge of the cage [ring] floor and the first row of spectator seats on all sides of the cage [ring].

(2) A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage [ring]; and

(b) Along the sides of the entry lane for contestants to enter the cage [ring] and the spectator area.

Section 12. [The ring shall meet the following requirements:

(1) All bouts shall be held in a four (4) sided roped ring with the following specifications:

(a) The minimum size of the ring shall be sixteen (16) feet by sixteen (16) feet, inside the ropes;

(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor;

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(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

(b) A fourth rope may be used if approved by the inspector or employee of the authority prior to the commencement of the show;

(c) A rope shall be at least one (1) inch in diameter;

(d) A rope shall be wrapped in a clean, soft material and drawn taut;

(e) A rope shall be held in place with vertical straps on each of the four (4) sides of the ring; and

(3) A rope shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter; and

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Is at least one (1) inch in thickness using slow recovery foam matting;

(b) Extends over the edge of the platform; and

(c) Is covered with a single canvas or a similar material stretched tightly.

(5) A ring rope shall be attached to the ring posts by turnbuckles that are padded with a soft vertical pad at least six (6) inches in width.

(6)(a) A promoter may request an alternate ring design, including fenced area rings consisting of more than four (4) equal sides, provided that the area inside is no less than 256 square feet. This request shall be submitted to the executive director no less than thirty (30) days prior to the event.]

(b)[A fenced area used in] A contest or exhibition of mixed martial arts shall be held in a fenced area meeting[meet] the following requirements:

1. The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

2. The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas, duck or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in lumps or ridges shall not be used.

3. The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

4. Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

5. The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

6. Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

7. The fenced area shall have at least one (1) entrance.

8. There shall be no protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

9. Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof

10. A cage shall have a canvas mat.

Section 13. A bell or horn shall be used by the timekeeper in indicating the time.

Section 14. In addition to the cage and cage [ring and ring] equipment, the promoter shall supply the following items, which

shall be available for use as needed.

(1) A public address system in good working order.

(2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the cage and the cage [ring and the ring] floor.

(3) Items for each contestant's corner, to include:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves.

(4) A complete set of numbered round-cards.

(5) A clean stretcher and a clean blanket, placed under or adjacent to the ring, throughout each program.

(6) First aid oxygen apparatus or equipment.

Section 15. A scales used for any weigh-in shall be approved in advance by the authority.

Section 16. A promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted and the locker room(s) to ensure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 17. All emergency medical personnel and portable medical equipment shall be stationed at cageside [ringside] during the event. There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests. If the ambulance is required to leave the event for any reason, a contest shall not be allowed to continue until an ambulance is once again present and medical personnel are at cageside [ringside].

Section 18. There shall be at least one (1) physician licensed by the authority at cageside [ringside] before a bout is allowed to begin. The physician shall have at cageside [ringside] any medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show.

Section 19. A promoter shall provide insurance for his contestant for any injuries sustained in the mixed martial arts event. The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits. A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event. Payment of any deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$300. Any deductible expense above \$300 shall be the responsibility of the promoter.

Section 20. A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts show is being held. This notice shall include the date, time, and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 21. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required [One (1) physician, except that two (2) physicians shall be assigned to any bout designated a championship bout by a national sanctioning body recognized by the authority]; and

(4) One (1) referee, unless more than 18 bouts [thirty (30) rounds] are scheduled, in which case a minimum of two (2) referees shall be required.

Section 22. Unless the authority approves an exception:

(1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed three (3) rounds in duration.

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(2) A championship contest of mixed martial arts shall not exceed [be] five (5) rounds in duration.

(3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 23. Weight classes of contestants; weight loss after weigh-in.

(1) Except with the approval of the authority, the classes for contestants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:

CLASS	WEIGHT
Flyweight	Up to 125 lbs.
Bantamweight	Up to 135 lbs.
Featherweight	Up to 145 lbs.
Lightweight	Up to 155 lbs.
Welterweight	Up to 170 lbs.
Middleweight	Up to 185 lbs.
Light Heavyweight	Up to 205 lbs.
Heavyweight	Up to 265 lbs.
Super Heavyweight	Over 265 lbs.

(2) After the weigh-in of a contestant competing in a contest or exhibition of mixed martial arts:

(a) Change in weight in excess of three (3) pounds is not permitted for a contestant who weighed in at 145 pounds or less.

(b) Change in weight in excess of four (4) pounds is not permitted for a contestant who weighed in at over 145 pounds.

(3) The change in weight described in subsection two shall not occur later than two (2) hours after the initial weigh-in.

Section 24. The following shall be prohibited:

(1) "Battle royal"; and

(2) Use of excessive grease or any other substance that may handicap an opponent.

Section 25. Contestants Repeatedly Knocked Out or Otherwise Defeated. (1) A mixed martial arts contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician, the authority decides the action is necessary in order to protect the health and welfare of the contestant.

(2) A mixed martial arts contestant who has suffered six (6) consecutive defeats by knockout shall not be allowed to compete again until he has been investigated by the authority and examined by a physician.

(3) A mixed martial arts contestant whose license is under suspension in any other jurisdiction may be allowed to participate in any contest only after review and approval of the case by an inspector or employee of the authority.

(4) Any mixed martial arts contestant who has been knocked out shall be prohibited from all physical contact for sixty (60) days.

(5) Any mixed martial arts contestant who has suffered a technical knockout may, in the discretion of the inspector, be prohibited from physical contact for up to thirty (30) days. In determining how many days to prohibit the contestant from physical contact, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

Section 26. A person over the age of thirty-nine (39) shall not participate as a contestant in a mixed-martial arts match without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled board meeting [bout].

Section 27. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by

the inspector or employee of the authority.

Section 28. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by any name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 29. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or before pre-fight physical. The results of these tests shall be no more than 180 days old. A person with positive test results shall not be allowed to fight.

Section 30. A contestant shall not compete against a member of the opposite sex.

Section 31. A contestant shall not use a belt which contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 32. Proper attire for a mixed martial arts contestant. A mixed martial arts contestant shall:

(1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) Not wear shoes or any padding on his feet during the contest.

(3) Wear a groin protector

(4) Wear a kidney protector if available

(5) Wear a mouthpiece

Section 33. (1) The authority may request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense.

(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, or the authority may impose a fine upon the contestant, or both.

(3) 1. The administration of or use of any of the following is prohibited in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant:

(a) Alcohol;

(b) Stimulant; or

(c) Drug or injection that has not been approved by the Authority, including, but not limited to, the drugs or injections listed in subsection 2.

2. The following types of drugs, injections or stimulants are prohibited pursuant to subsection 1:

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in subsection 4.

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in subsection 4. This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby adopted by reference. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org.

3. The following types of drugs or injections are not prohibited pursuant to subsection 1, but their use is discouraged by the Commission:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

4. The following types of drugs or injections are approved by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(1) Afrin;

(2) Oxymetazoline HCL Nasal Spray; or

(3) Any other decongestant that is pharmaceutically similar to a decongestant listed in subparagraph (1) or (2).

5. An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the Authority or a representative of the Authority directs him to do so.

6. A licensee who violates any provision of this section is subject to disciplinary action by the Authority. In addition to any other disciplinary action by the Authority, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the Authority may, in its sole discretion, change the result of that contest or exhibition to a no decision.

Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:

(a) The better contestant of a round receives 10 points and his opponent proportionately less.

(b) If the round is even, each contestant receives 10 points.

(c) No fraction of points shall be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the authority's desk.

(3) The majority opinion is conclusive and, if there is no majority, the decision is a draw.

(4) When the authority's representative has checked the scores, he shall inform the announcer of the decision. The announcer shall then inform the audience of the decision over the speaker system.

(5) Unjudged exhibitions may be permitted with the prior approval of the authority.

Section 35. The following acts constitute fouls in mixed martial arts:

(1) Butting with the head.

(2) Eye gouging of any kind.

(3) Biting.

(4) Hair pulling.

(5) Fishhooking.

(6) Groin attacks of any kind.

(7) Putting a finger into any orifice or into any cut or laceration on an opponent.

(8) Small joint manipulation.

(9) Striking to the spine or the back of the head.

(10) Striking downward using the point of the elbow.

(11) Throat strikes of any kind, including grabbing the trachea.

(12) Clawing, pinching or twisting the flesh.

(13) Grabbing the clavicle.

(14) Kicking the head of a grounded opponent.

(15) Kneeing the head of a grounded opponent.

(16) Stomping the head of a grounded opponent.

(17) Kicking to the kidney with the heel.

(18) Spiking an opponent to the canvas on his head or neck.

(19) Throwing an opponent out of the [ring-øf] fenced area.

(20) Holding the shorts of an opponent.

(21) Spitting at an opponent.

(22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.

(23) Holding [the ropes-øf] the fence.

(24) Using abusive language in the [ring-øf] fenced area.

(25) Attacking an opponent on or during the break.

(26) Attacking an opponent who is under the care of the referee.

(27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat.

(28) Flagrantly disregarding the instructions of the referee.

(29) Timidity, including avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.

(30) Interference by the corner.

(31) The throwing by a contestant's corner staff of objects into the cage[ring] during competition.

Section 36. (1) If a contestant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.

(2) When the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(4) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

Section 37. (1)(a) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the contestant who has been fouled is able to continue or not.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the authority's representative of his determination that the foul was accidental.

(2) If the referee determines that a contest or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition shall be declared a no contest if the foul occurs during:

(a) The first two (2) rounds of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a contest or exhibition that is scheduled for more than three (3) rounds.

(3) If an accidental foul renders a contestant unable to continue the contest or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a contest or exhibition that is scheduled for more than three (3) rounds, the outcome shall be determined by scoring the completed rounds.

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(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(5) Any contestant committing a foul may be issued a violation by the inspector or employee of the authority.

Section 38. A contest of mixed martial arts may end in the following ways:

- (1) Submission by:
 - (a) Physical tap out.
 - (b) Verbal tap out.
- (2) Technical knockout by the referee or physician stopping the contest.
- (3) Decision via the scorecards, including:
 - (a) Unanimous decision.
 - (b) Split decision.
 - (c) Majority decision.
 - (d) Draw, including:
 1. Unanimous draw.
 2. Majority draw.
 3. Split draw.
 - (4) Technical decision.
 - (5) Technical draw.
 - (6) Disqualification.
 - (7) Forfeit.
 - (8) No contest.

Section 39. Within twenty-four (24) hours of the conclusion of a show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the executive director the form "MMA Event Report" (2/06).

Section 40. The following requirements apply to all bouts between female contestants:

- (1) A contestant shall not wear facial cosmetics during the bout;
- (2) A contestant with long hair shall secure her hair with soft and nonabrasive material;
- (3) Weight classes shall be those established in section 23;
- (4) A contestant shall wear a properly-fitted:
 - (a) Breast protector;
 - (b) Groin protector; and
 - (c) Mouthpiece;
- (5) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.
- (6) A promoter shall provide a separate locker room for female contestants.
- (7) A physician examining a female contestant shall be accompanied by a female authority representative when in the female locker room.

Section 41. 1. Contestants must attend a pre-fight meeting as directed by a representative of the Authority. Contestants and Officials must check in with a representative of the Authority no less than one (1) hour prior to the starting time of the event. Contests must stay in the locker room area until it is time for them to compete.

Section 42. 1. All shows shall be visibly recorded and retained by the promoter for one (1) year.

2. Upon request of the authority, the promoter shall provide the visual recording of a show to the authority.

Section 43. A promoter shall maintain an account with the recognized national database as identified by the Authority, and submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 44. All non-sanctioned activities, including but not limited to concerts, shall be completed prior to the scheduled start

time of the event.

Section 44[44]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for License as a Mixed Martial Arts Contestant", 10/11[(5/06)];
- (b) "MMA Show Notice Form", 10/11[(5/06)]; and
- (c) "MMA Event Report", 10/11[(5/06)];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601[100 Airport Road, Frankfort, Kentucky 40604,], Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE GINTER, Board Chair

APPROVED BY AGENCY: October 7, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

- (1) Provide a brief summary of
 - (a) What this administrative regulation does: This regulation establishes requirements for MMA contests.
 - (b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.171(2)(a).
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for MMA contests.

(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 eliminate the option of a ring, change the fee schedule for judges, timekeepers and physicians, require greater security, require a promoter to pay an insurance deductible if necessary, change the length of some contests, provide more specific requirements relate to drug usage, and impose other requirements.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to protect contestants from injury.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the health of licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 138 pro mma licensees.

(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: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal if any. In some instances it may cost less to rent a ring as opposed to a cage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Their health will be protected.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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:

PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Authority (Amendment)

201 KAR 27:017. Requirements for elimination events.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)

STATUTORY AUTHORITY: KRS 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.151(1) grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. This administrative regulation establishes the rules of conduct governing elimination events.

Section 1. (1) In order to participate in an elimination event, a contestant shall be required to obtain a permit issued by the authority to participate in the event.

(2) A contestant shall complete and submit to the authority the form "Application for an Elimination Event Contestant Permit", (2/06).

(3) The contestant shall also pay a fee of five (5) dollars to participate in an elimination event show.

(4) The permit and the payment of the fee to participate in an elimination event shall allow participation in that event only.

Section 2. Before the commencement of the main event of any elimination event or exhibition, the promoter of the show or exhibition shall tender to the inspector or employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials set forth in Section 3 of this administrative regulation.

Section 3. The schedule of compensation to be paid by the promoter to any official officiating in the elimination event shall be as follows:

(1) For a judge: \$150 per day for shows of fifty (50) or fewer contestants, or \$175 per day for shows of over fifty (50) contestants.

(2) For a timekeeper: \$150 per day for shows of fifty (50) or fewer contestants, or \$175 per day for shows of over fifty (50) contestants.

(3) For a physician: \$300 plus five (5) dollars per contestant.

(4) For a referee: \$150 dollars per day for shows of fifty (50) or fewer contestants, or \$175 dollars per day for shows of over fifty (50) contestants.

Section 4. If a show or exhibition is cancelled, with less than twenty-four (24) hours notice to the authority, an official shall be paid one-half (1/2) of the compensation required by this administrative regulation.

Section 5. The promoter shall submit a request for a show date to the authority for approval no less than thirty (30) calendar days before the requested date. There shall be no advertising of the event prior to approval by the authority. Once the show date has been approved, all advertisement shall include the promoter's license number.

Section 6. (1) Before the commencement of a show, any change or substitution shall be:

(a) Announced from the ring; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 7. The row nearest the ring on all four (4) sides shall be under the exclusive control of the authority.

Section 8. (1) The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.

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(2) A partition, barricade, or some type of divider shall be placed between:

- (a) The first row of the spectator seats and the six (6) foot area surrounding the ring; and
- (b) The entry lane for boxers to enter the ring and the spectator area.

Section 9. The ring specifications shall meet the requirements established in this section.

(1) All bouts shall be held in a four (4) sided roped ring with the following specifications:

(a) The ring shall be at least sixteen (16) feet by sixteen feet inside the ropes;

(b) The floor of the ring shall extend beyond the ropes for a distance of at least one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

(b) A fourth rope may be used if it is approved by the inspector or employee of the authority prior to the commencement of the show;

(c) The ropes shall be at least one (1) inch in diameter;

(d) The ropes shall be wrapped in a clean, soft material and drawn taut; and

(e) The ropes shall be held in place with vertical straps on each of the four (4) sides of the ring.

(3) The ropes shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter; and

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Is at least one (1) inch in thickness using slow recovery foam matting;

(b) Extends over the edge of the platform; and

(c) Is covered with a single tightly stretched canvas or a similar material.

(5) The ring ropes shall be attached to the ring posts by turn-buckles padded with a soft vertical pad at least six (6) inches in width.

Section 10. A bell or horn shall be used by the timekeeper to indicate the time.

Section 11. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:

(1) A public address system in good working order;

(2) Chairs for the judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(3) Items for each contestant's corner including:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves.

(4) A clean stretcher and a clean blanket placed under or adjacent to the ring throughout each program; and

(5) First aid oxygen apparatus or equipment.

Section 12. (1) A contestant shall wear boxing gloves that shall be:

(a) Dry, clean, and sanitary;

(b) Furnished by the promoter;

(c) Clearly labeled with the promoter's name;

(d) Of equal weight;

(e) Of not less than sixteen (16) ounces; and

(f) Thumbless or thumb-attached.

(2) Bandaging of the hands shall not be allowed.

(3) A contestant shall wear properly fitted headgear that shall be:

(a) Clean and sanitary;

(b) Furnished by the promoter; and

(c) Clearly labeled with the promoter's name.

(4) A contestant shall not be allowed to provide substitute gloves or headgear.

(5) An elimination event shall be divided into at least two (2) weight divisions. No open shows shall be permitted.

(6)(a) An elimination event round shall:

1. Not exceed sixty (60) seconds duration; and

2. Have not less than a one (1) minute rest period between rounds.

(b) Elimination event bouts shall not exceed three (3) rounds.

(7) A person over the age of thirty-nine (39) shall not participate in an elimination event without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 13. A contestant shall report to, and be under the general supervision of, the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 14. The inspector or an employee of the authority shall make all bouts in an elimination event.

Section 15. (1) A contestant shall produce one (1) form of picture identification.

(2) A contestant shall not assume or use the name of another.

(3) A contestant shall not change his ring name nor be announced by any name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 16. A contestant shall not compete against a member of the opposite sex.

Section 17. A contestant shall:

(1) Be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;

(2) Wear closed toe and heel shoes during the contest;

(3) Wear a groin protector;

(4) Wear a kidney protector if available; and

(5) Wear a mouthpiece.

Section 18. The following requirements apply to all bouts between female contestants:

(1) A contestant shall not wear facial cosmetics during the bout;

(2) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(3) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

Section 19. Scales used for any weigh-in shall be approved in advance by the authority.

Section 20. (1) All promoters shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided.

(2) Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

(3) A promoter shall provide security in the locker room area.

Section 21. (1) All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event.

(2) Resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician shall be on site at all contests.

(3) If the ambulance or emergency medical technician is required to leave the event for any reason, no boxing shall be allowed to continue until an ambulance is on site and the emergency medical technicians are once again at ringside.

Section 22. There shall be at least one (1) physician licensed by the authority at ringside before a bout shall be allowed to begin. The physician shall have at ringside any medical supplies reasonably anticipated to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in an elimination event.

Section 23. (1) The promoter shall secure insurance for his contestants that provides medical coverage for any injuries sustained in the boxing event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

Section 24. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to elimination events by the authority. The authority shall assign to each event:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician; and

(4) One (1) referee if fifty (50) or fewer contestants participate in the elimination event, or two (2) referees if more than fifty (50) contestants participate in the elimination events.

Section 25. If at any time during or between rounds a contestant begins to bleed so that blood may come into contact with the other contestant, the gloves of the other contestant, the ring, the officials, or the audience, the bout shall be terminated. The judges shall score the bout until the time the bout was halted and shall determine the winner. Either the referee or the ringside physician has the power to terminate the bout under this section.

Section 26. (1) The authority may request a contestant to submit to a drug screen for illegal drugs at the contestant's expense. If the drug screen indicates the presence of illegal drugs in the contestant, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, or the authority may impose a fine upon the contestant, or both

(2) From arrival to the venue to the conclusion of the event, a contestant shall not consume, possess, or participate under the influence of alcohol or any other substance that may affect the contestant's ability to participate.

Section 27. The promoter shall submit written notice to a local hospital with an on-call neurosurgeon that an elimination event is being held. This notice shall include the date, time and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 28. Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof

10. A ring shall have a canvas mat.

Section 29[28]. Incorporation by Reference. (1) "Application for an Elimination Event Contestant Permit", (5/06), is incorporated by reference.

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

GEORGE GINTER, Board Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robertson and Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes requirements for elimination events.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.180(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for elimination events.

(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 creates a requirement for promoter security and requirements related to the heat index at events.

(b) The necessity of the amendment to this administrative regulation: This amendment creates a requirement for promoter security and requirements related to the heat index at events.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the health of the licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3100 active licensees of the Board. The vast majority are licensed as participants. Each time a participant fights, he or she may have 2 or 3 seconds assisting depending on the sport.

(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: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be safer as this will limit competition in heat.

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

(a) Initially: No new costs will be incurred by the changes.

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(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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:

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(Amendment)**

201 KAR 27:035. Seconds.

RELATES TO: KRS 229.021(2), 229.081, 229.171(1), 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.171(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) gives the Kentucky Boxing and Wrestling Authority the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions held in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. This administrative regulation establishes the guidelines that shall be followed by persons acting as seconds.

Section 1. (1) A second shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show.

(2) A second shall obey all orders of the inspector or employee of the authority.

Section 2. (1) A second shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27.

(2) An applicant shall file a completed application and pay the licensure fee established in 201 KAR 27:008, Sections 2 and 3.

Section 3. Any violation by a second, of the law or administrative regulations of the authority, shall be sufficient cause for disqualification of the contestant, for whom the second acts, by the referee or judges.

Section 4. A second shall not act as managers unless so licensed.

Section 5. A second shall not be more than three (3) in number, and only two (2) shall be allowed in the ring at the same time.

Section 6. A second shall be equipped with a first aid kit and the necessary supplies for proper attendance upon the second's contestant.

Section 7. A second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round of a bout or match and remove all equipment. None of this equipment shall be placed on the ring floor until after the bell has sounded at the end of the round or period.

Section 8. A second shall not throw a towel or other article into the ring.

Section 9. A second shall wear surgical gloves at all times while carrying out his or her duties.

Section 10. If the inspector has reason to believe that a second has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may take one (1) or more of the following actions:

- (1) Issuance of a cease and desist order to the second;
- (2) Issuance of a notice of violation to the second; or
- (3) Ejection of the second from a show.

Section 11. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a second, the authority may impose one (1) or more of the following penalties:

- (1) Suspension of the license of the second pursuant to KRS 229.200;
- (2) Revocation of the license of the second pursuant to KRS 229.200;
- (3) Reprimand of the second pursuant to KRS 229.200; or
- (4) Assessment of a fine[~~fine~~] pursuant to KRS 229.991(5).

GEORGE GINTER, Board Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robertson and Michael West

- (1) Provide a brief summary of
 - (a) What this administrative regulation does: This regulation establishes requirements for event seconds.
 - (b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.180(1).
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for event seconds.
- (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 typographical error.
 - (b) The necessity of the amendment to this administrative regulation: The necessity of amendment is correct a typographical error.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will put individuals on greater notice as to requirements.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3100 active licensees of the Board. The vast majority are licensed as participants. Each time a participant fights, he or she may have 2 or 3 seconds assisting depending on the sport.
- (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: None
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be on greater notice of requirements.
 - (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: No new costs will be incurred by the changes.
 - (b) On a continuing basis: No new costs will be incurred by the changes.
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.
 - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees will be required to implement this administrative regulation amendment.
 - (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish fees.
 - (9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

be impacted by this administrative regulation? Kentucky Boxing and Wrestling Authority

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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:

PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Authority (Amendment)

201 KAR 27:055. Physicians.

RELATES TO: KRS 229.091(1), 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.081(4), 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081(4) provides for the licensing of physicians for professional bouts. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations the authority promulgates. This administrative regulation establishes the rules of conduct for physicians.

Section 1. (1) The physician officiating at a show shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27.

(2) A physician shall be subject to any orders given by the inspector or employee of the authority.

(3) An applicant shall file a completed application and pay the license fee established in 201 KAR 27:008, Sections 2 and 3.

Section 2. (1) The physician shall have general supervision over the physical condition of each contestant, and it shall be the physician's duty to make a thorough physical examination of each contestant at weigh-in time, or within eight (8) hours prior to the time set for their entrance into the ring.

(2) The physician shall deliver a written prebout physical report to the inspector or employee of the authority, in attendance at the show, stating the physical condition of the contestant prior to the contestant's entrance into the ring on the "PreBout Examination" form, (2/06).

Section 3. The physician shall take a position near the ringside and shall carefully observe the physical condition of each contestant during each bout, and shall administer medical aid should any emergency arise requiring medical attention.

Section 4. The physician shall prohibit any contestant whom the physician reasonably believes is physically unfit for competition or impaired from alcohol or a controlled substance from entering the ring, and the physician shall order the referee to stop a bout or

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match if the physician deems it necessary to prevent serious physical injury to a contestant, official, second, manager, or spectator.

Section 5. The physician shall not enter the ring except in an emergency or unless authorized to do so by the referee, the inspector, or an employee of the authority.

Section 6. The physician shall be licensed pursuant to KRS Chapter 311 as a physician. The physician shall hold an M.D. or D.O. degree.

Section 7. The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver a postbout physical report to the inspector or employee of the authority when completed on the "Postbout Examination" form (2/06);

Section 8. The physician shall remain at the event locker room~~[location]~~ until each competitor has left the locker room~~[location]~~.

Section 9. If the inspector has reason to believe that a physician has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may take one (1) or more of the following actions:

- (1) Issuance of a cease and desist order to the physician;
- (2) Issuance of a notice of violation to the physician; or
- (3) Ejection of the physician from a show.

Section 10. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a physician, the authority may impose one (1) or more of the following penalties:

- (1) Suspension of the license of the physician pursuant to KRS 229.200;
- (2) Revocation of the license of the physician pursuant to KRS 229.200;
- (3) Reprimand of the physician pursuant to KRS 229.200; or
- (4) Assessment of a fine pursuant to KRS 229.991(5).

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

- (a) "Prebout Examination", (5/06); and
 - (b) "Postbout Examination", (5/06).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE GINTER, Board Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 3, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Robertson and Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes requirements for event physicians.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.081(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for event physicians.

(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 requires a physician to be an MD or DO to work an event.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is ensure medical treatment for contestants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the health of licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 9 active physicians licensees.

(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: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None. The health of the fighters will be better protected.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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:

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(Amendment)**

201 KAR 27:100. General requirements for amateur mixed martial arts shows.

RELATES TO: KRS 229.011(4), 229.021, 229.031(1), 229.071(1), 229.091, 229.101, 229.131, 229.171, 229.991

STATUTORY AUTHORITY: KRS 229.071(2), (3), 229.081, 229.091(1), 229.151(1), 229.171(1), 229.180

NECESSITY, FUNCTION, AND CONFORMITY: Except as provided in KRS 229.011(4), KRS 229.171(1) authorizes the authority to maintain the sole direction, management, control, and jurisdiction over all boxing, sparring, kickboxing, mixed martial arts and wrestling shows or exhibitions to be held or conducted in the Commonwealth. KRS 229.180 authorizes the Authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 requires certain participants in exhibitions and shows to be licensed in accordance with eligibility requirements established by administrative regulation. KRS 229.071(2) authorizes the Authority to grant annual licenses to applicants for participation in shows and exhibitions if the Authority judges that the financial responsibility, experience, character, and general fitness of the applicant are sufficient that participation by the applicant is in the public interest. KRS 229.071(3) authorizes the authority to establish annual license fees for licensed individuals. KRS 229.091(1) requires that every license be subject to administrative regulations promulgated by the Authority. This administrative regulation establishes license requirements and fees for certain participants in competitive contact sports such as boxing and mixed martial arts shows and exhibitions in the Commonwealth.

Section 1. (1)(a) The Authority shall license all persons approved to participate as an amateur contestant in a mixed martial arts show.

(b) Applicants who have competed in a professional mixed martial arts bout shall not be licensed as an amateur and shall not compete against an amateur.

(2) Participants shall apply for a license using the Application for Amateur Mixed Martial Arts Contestant License.

(3) Contestants over the age of thirty-nine (39) shall not be issued a license until they have complied with Section 26 of this administrative regulation and have been approved by the Authority.

(4)(a) The fee for the amateur license shall be twenty-five (25) dollars.

(b) License renewal shall be ten (10) dollars.

(c) An amateur license shall expire on December 31 of the year in which the license is issued.

Section 2. The schedule for compensation to be paid to the following officials provided by the Authority who are participating in a amateur mixed martial arts show shall be as follows and shall be paid prior to the commencement of the main event:

(1) Judge for mixed martial arts: fifty (50) dollars.

(2) Timekeeper for mixed martial arts: fifty (50) dollars.

(3) Physician for mixed martial arts:

(a) \$300 up to ten (10) schedule bouts;

(b) \$350 eleven (11) to fifteen (15) scheduled bouts; or

(c) \$400 over fifteen (15) scheduled bouts..

(4) Referee for mixed martial arts: seventy-five (75) dollars.

(5) Bout Assistant for mixed martial arts: seventy-five (75) dollars.

Section 3. If a show is cancelled with less than twenty-four (24) hours notice to the Authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 4. (1) The promoter shall submit a request for a show date not less than thirty (30) calendar days before the requested date for approval by the Authority using the Amateur MMA Show Notice Form.

(2) There shall not be advertising of the event prior to this approval.

(3) Upon approval by the Authority, all advertisements shall include the promoter's license number.

Section 5. (1)(a) The proposed program for a show shall be filed with the Authority at least five (5) business days prior to the date of the show.

(b) Notice of any change in a program or any substitutions in a show shall be filed immediately with the Authority.

(c) The program shall not have more than two (2) fifteen (15) minute intermissions.

(2) If the Authority determines, after reviewing a contestant's fight history that a proposed bout may not be reasonably competitive, the bout shall be denied.

(3) Amateur mixed martial arts contestants age thirty-nine (39) and older shall be in the Masters Division and shall only compete against contestants within this division.

Section 6. (1) Before the commencement of a show, all changes or substitutions shall be:

(a) Announced from the cage[ring]; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 7. (1) All shows shall be visibly recorded and retained by the promoter for one (1) year.

(2) Upon request of the authority, the promoter shall provide the visual recording of a show to the authority.

Section 8. (1) The area between the cage[ring] and the first row of spectators on all ~~four~~ (4) sides and the locker room area shall be under the exclusive control of the Authority.

(2) Alcohol or smoking shall not be allowed in the areas under the control of the Authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the Authority.

Section 9. (1) There shall be an area of at least six (6) feet between the edge of the cage[ring] floor and the first row of spectator seats on all sides of the cage[ring].

(2) A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage[ring]; and

(b) Along the sides of the entry lane for contestants to enter the cage[ring] and the spectator area.

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Section 10. [The ring shall meet the following requirements:

(1) All bouts shall be held in a four (4) sided roped ring with the following specifications:

(a) The minimum size of the ring shall be 16 ft. x 16 ft., inside the ropes;

(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

(b) A fourth rope may be used if approved by the inspector or employee of the Authority prior to the commencement of the show;

(c) A rope shall be at least one (1) inch in diameter;

(d) A rope shall be wrapped in a clean, soft material and drawn taut;

(e) A rope shall be held in place with vertical straps on each of the four (4) sides of the ring; and

(3) A rope shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter; and

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Shall be at least one (1) inch in thickness using slow recovery foam matting;

(b) Extends over the edge of the platform; and

(c) Shall be covered with a single canvas or a similar material stretched tightly.

(5) A ring rope shall be attached to the ring posts by turnbuckles that are padded with a soft vertical pad at least six (6) inches in width.

(6)(a) 1. A promoter may request an alternate ring design, including fenced area rings consisting of more than four (4) equal sides, provided that the area inside is not less than 256 square feet.

2. This request shall be submitted to the executive director not less than thirty (30) days prior to the event.

(b) [A fenced area used in a] contest or exhibition of mixed martial arts shall be held in a fenced area meeting [meet] the following requirements:

1. The fenced area shall be circular or have equal sides and shall not be smaller than twenty (20) feet wide and not larger than thirty-two (32) feet wide.

2.a. The floor of the fenced area shall be padded with closed-cell foam; with at least a one (1) inch layer of foam padding; with a top covering of a single canvas, duck, or similar material tightly stretched and laced to the platform of the fenced area.

b. Material that tends to gather in lumps or ridges shall not be used.

3. The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

4. Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

5. The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

6. Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

7. The fenced area shall have at least one (1) entrance.

8. There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to compete.

9. Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

10. A cage must have a canvas mat.

Section 11. A bell or horn shall be used by the timekeeper to indicate the time.

Section 12. In addition to the cage and cage [ring and the ring] equipment, the promoter shall supply the following items, which shall be available for use as needed:

(1) A public address system in good working order;

(2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the cage and cage [ring and the ring] floor;

(3) Items for each contestant's corner, to include:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves;

(4) A complete set of numbered round-cards, if needed;

(5) A clean stretcher and a clean blanket, placed under or adjacent to the ring, throughout each program;

(6) First aid oxygen apparatus or equipment.

Section 13. A scale used for any weigh-in shall be approved in advance by the authority to determine accuracy.

Section 14. (1) A promoter shall provide a minimum of two (2) security guards for the premises where shows are conducted and the locker rooms to ensure to the satisfaction of the Authority that adequate protection against disorderly conduct has been provided.

(2) A disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

Section 15. (1) All emergency medical personnel and portable medical equipment shall be stationed at cageside [ringside] during the show.

(2) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests.

(3) If the ambulance is required to leave the event for any reason, a contest shall not be allowed to continue until an ambulance shall be once again present and medical personnel shall be cageside [ringside].

(4) Proof of ambulance coverage being scheduled shall be provided to the authority not less than two (2) business days before the show.

Section 16. (1) There shall be at least one (1) physician licensed by the authority at cageside [ringside] before a bout shall be allowed to begin.

(2) The physician shall have at cageside [ringside] any medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show.

Section 17. (1) A promoter shall provide insurance for the promoter's contestant for injuries sustained in the mixed martial arts show. Payment of any deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$300. Any deductible expense above \$300 shall be the responsibility of the promoter.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the authority not less than two (2) business days before the show.

Section 18. (1) A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts show is being held.

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(2) This notice shall include the date, time, and location of the show.

(3) A copy of this notice shall be filed with the authority not less than two (2) business days before the show.

Section 19. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required;

(4) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required; and

(5) One (1) bout assistant.

Section 20. Unless the Authority approves an exception:

(1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship contest of mixed martial arts shall not exceed five (5) rounds in duration;

(3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be a maximum of three (3) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be ninety (90) seconds in duration.

Section 21. Weight Classes of Contestants; Weight Loss After Weigh-in. (1) Except with the approval of the Authority, the classes for contestants competing in an amateur mixed martial arts show and the weights for each class shall be established in Table A.

Table A. Class & Weight Schedule	
CLASS	WEIGHT
Flyweight	Up to 115 lbs.
Lightweight	116 to 125 lbs.
Super Lightweight	126 to 135 lbs.
Welterweight	136 to 147 lbs.
Middleweight	148 to 165 lbs.
Super Middleweight	166 to 174 lbs.
Light Heavyweight	175 to 189 lbs.
Cruiserweight	190 to 204 lbs.
Heavyweight	205 to 249 lbs.
Super Heavyweight	Over 249 lbs.

(2) After the weigh-in of a contestant competing in an amateur mixed martial arts show:

(a) Weight gain in excess of six (6) pounds is not permitted for a contestant who weighed in at 145 pounds or less; and

(b) Weight gain in excess of eight (8) pounds is not permitted for a contestant who weighed in at over 145 pounds.

(3) The change in weight described in subsection (2) of this section shall not occur later than two (2) hours after the initial weigh-in.

(4) A contestant shall not be allowed to fight more than one (1) weight class above his weight.

Section 22. Glove Specifications. (1) The promoter shall supply all gloves for the event.

(2) Contestants who weigh 145 or less shall wear gloves that are a minimum of four (4) ounces.

(3) Contestants who weigh 146 and above shall wear gloves that are a minimum of six (6) ounces and a maximum of eight (8) ounces.

(4) Both contestants shall wear the same glove weight.

Section 23. The following shall be prohibited:

(1) "Battle royal" as defined in 201 KAR 27:005, Section 1(2); and

(2) Use of excessive grease or another substance that may handicap an opponent.

Section 24. (1) A professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall be suspended for a period not less than one (1) year.

(2) A promoter who allows a professional to compete against an amateur shall be suspended for period not less than one (1) year.

Section 25. Contestants Repeatedly Knocked Out, Defeated, or Suspended. (1) A mixed martial arts contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting him to a thorough examination by a physician, the authority decides the action shall be necessary in order to protect the health and welfare of the contestant.

(2) A mixed martial arts contestant who has suffered six (6) consecutive defeats by knockout or technical knockout shall not be allowed to compete again until he has been investigated by the Authority and examined by a physician licensed by the Authority.

(3) A mixed martial arts contestant whose license is under administrative suspension in another jurisdiction resulting from a violation not established in this administrative regulation may be allowed to participate in a contest only after review and approval of the case by an inspector or employee of the Authority.

(4) A mixed martial arts contestant who has been knocked out shall be prohibited from all mixed martial arts competition for sixty (60) days.

(5) Any mixed martial arts contestant who has suffered a technical knockout (TKO) may, at the discretion of the inspector, be prohibited from mixed martial arts competition for up to thirty (30) days. In determining how many days to prohibit the contestant from mixed martial arts competition, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

(6)(a) All contestants shall receive a mandatory seven (7) day rest period from mixed martial arts competition after competing in an event with a maximum of three (3) bouts within a twenty four (24) hour period.

(b) Day one (1) of the rest period shall commence on the first day following the twenty four (24) hour period.

Section 26. (1) A person over the age of thirty-nine (39) shall not participate as a contestant in a mixed martial arts match without first submitting to a comprehensive physical performed by a physician licensed by the Authority as a ringside physician.

(2) The results of the physical and a medical authorization or release shall then be completed and submitted to the Authority not later than fifteen (15) business days prior to the scheduled board meeting[bout].

Section 27. (1) A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name or be announced by a name other than that which appears on his license.

(3) All contestants and officials shall check in with the authority not less than one (1) hour prior to the commencement of the event.

Section 28. A contestant shall not compete against a member of the opposite sex.

Section 29. (1) A contestant shall not use a belt that contains a metal substance during a bout.

(2) The belt shall not extend above the waistline of the contestant.

Section 30. A mixed martial arts contestant shall:

(1) Be clean, neatly clothed in proper ring attire, and the shorts of opponents shall be of distinguishing colors;

(2) Not wear shoes or any padding on his feet during the contest;

(3) Wear a groin protector; and

(4) Wear a mouthpiece.

Section 31. (1) The Authority may request that a contestant submit to a drug screen for controlled substances at the contestant's expense.

(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the Authority shall suspend or revoke the license of the contestant, or the Authority shall impose a fine upon the contestant, or both.

(3) 1. The administration of or use of any of the following is prohibited in any part of the body, either before or during a contest or exhibition:

(a) Alcohol;

(b) Stimulant; or

(c) Drug or injection that has not been approved by the Authority, including, but not limited to, the drugs or injections listed in subsection 2.

2. The following types of drugs, injections or stimulants are prohibited pursuant to subsection 1:

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in subsection 4.

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in subsection 4. This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby adopted by reference. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org.

3. The following types of drugs or injections are not prohibited pursuant to subsection 1, but their use is discouraged by the Commission:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

4. The following types of drugs or injections are approved by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vancril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(1) Afrin;

(2) Oxymetazoline HCL Nasal Spray; or

(3) Any other decongestant that is pharmaceutically similar to a decongestant listed in subparagraph (1) or (2).

5. An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the Authority or a representative of the Authority directs him to do so.

6. A licensee who violates any provision of this section is subject to disciplinary action by the Authority. In addition to any other disciplinary action by the Authority, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the Authority may, in its sole discretion, change the result of that contest or exhibition to a no decision.

Section 32. (1) A contestant who has made a commitment to participate in an amateur mixed martial arts show and is unable to participate, for any reason, shall notify the promoter of the inability to participate not less than seven (7) days prior to the event.

(2) Failure to notify the promoter within the seven (7) days may result in immediate suspension, pending investigation by the Authority, and further disciplinary action may be taken by the Authority.

Section 33. A mixed martial arts promoter, official, or contestant whose license is suspended or revoked due to disciplinary actions shall be prohibited from attending all mixed martial arts events sanctioned by the authority during the term of the suspension or revocation.

Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:

(a) The better contestant of a round receives ten (10) points and the opponent proportionately less.

(b) If the round is even, each contestant receives ten (10) points.

(c) A fraction of points shall not be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the Authority's desk.

(3) The majority opinion shall be conclusive and, if there is not a majority, the decision shall be a draw.

(4)(a) After the authority's representative has checked the scores, the representative shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision over the speaker system.

(5) Unjudged exhibitions may be permitted with the prior approval of the Authority.

Section 35. The following moves are prohibited in amateur mixed martial arts shows:

(1) Elbow strikes to the head shall not be allowed at anytime.

(2) Knees to the head shall be permitted but shall only be used and delivered from a standing position.

Section 36. The following acts constitute fouls in mixed martial arts:

(1) Butting with the head;

(2) Eye gouging of any kind;

(3) Biting;

(4) Hair pulling;

(5) Fishhooking.

(6) Groin attacks of any kind;

(7) Putting a finger into any orifice or into any cut or laceration on an opponent;

(8) Small joint manipulation;

(9) Striking to the spine or the back of the head;

(10) Striking downward using the point of the elbow;

(11) Throat strikes of any kind, including grabbing the trachea;

(12) Clawing, pinching, or twisting the opponent's flesh;

(13) Grabbing the clavicle;

(14) Kicking the head of a grounded opponent;

(15) Kneeing the head of a grounded opponent;

(16) Stomping the head of a grounded opponent;

(17) Kicking to the kidney with the heel;

(18) Spiking an opponent to the canvas on his head or neck;

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- (19) Throwing an opponent out of the ~~ring or~~ fenced area;
- (20) Holding the shorts of an opponent;
- (21) Spitting at an opponent;
- (22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent;
- (23) Holding ~~the ropes or~~ the fence;
- (24) Using abusive language in the ~~z~~ fenced area;
- (25) Attacking an opponent on or during the break;
- (26) Attacking an opponent who is under the care of the referee;
- (27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;
- (28) Disregarding the instructions of the referee;
- (29) Timidity, including avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury;
- (30) Interference by the corner; or
- (31) The throwing by a contestant's corner staff of objects into the ring during competition.

Section 37. (1)(a) If a contestant fouls his opponent during an amateur mixed martial arts show, the referee may penalize him by deducting points from his score depending on the type and severity of the foul, regardless of whether or not the foul was intentional.

(b) The referee shall determine the number of points to be deducted in each instance and shall base the determination on the severity of the foul and its effect upon the opponent.

(2) If the referee determines that it is necessary to deduct a point or points because of a foul, the referee shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(4) A point or points to be deducted for a foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

Section 38. (1)(a) If a bout of amateur mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the contestant who has been fouled is able to continue or not.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the Authority's representative of the determination that the foul was accidental.

(2) If the referee determines that a bout of amateur mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout shall be declared a "no contest" if the foul occurs during:

(a) The first two (2) rounds of a bout that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout that is scheduled for five (5) rounds.

(3) If an accidental foul renders a contestant unable to continue the bout, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout that is scheduled for three (3) rounds; or

(b) The completed third round of a bout that is scheduled for five (5) rounds.

(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout.

(5) A contestant committing a foul may be issued a violation by the inspector or employee of the Authority, based on the seriousness of the foul.

Section 39. A contest of amateur mixed martial arts may end in the following ways:

(1) Submission by:

(a) Physical tap out; or

(b) Verbal tap out;

(2) Technical knockout by the referee or physician stopping the contest;

(3) Decision via the scorecards, including:

(a) Unanimous decision;

(b) Split decision;

(c) Majority decision; or

(d) Draw, including:

1. Unanimous draw;

2. Majority draw; or

3. Split draw;

(4) Technical decision;

(5) Technical draw;

(6) Disqualification;

(7) Forfeit; or

(8) No contest.

Section 40. Within twenty-four (24) hours of the conclusion of a event, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the Authority the form Amateur MMA Event Report.

Section 41. The following requirements apply to bouts between female contestants:

(1) A contestant shall not wear facial cosmetics during the bout;

(2) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(3) Weight classes shall be those established in Section 21 of this administrative regulation;

(4) A contestant shall wear a properly-fitted mouthpiece;

(5) A contestant shall wear a jersey top and shorts;

(6)(a) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

(b) These results shall be submitted to the Authority not less than twenty-four (24) hours prior to the show.

(7) A promoter shall provide separate locker room(s) for females.

Section 42. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or before pre-fight physical upon request. The results of these tests shall be no more than 365 days old. A person with positive test results shall not be allowed to fight.

Section 43. A promoter shall maintain an account with the recognized national database as identified by the Authority, and submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 44. All non-sanctioned activities, including but not limited to concerts, shall be completed prior to the scheduled start time of the event.

Section 45[42.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Amateur Mixed Martial Arts Contestant License", 10/11[9/08];

(b) "Amateur MMA Show Notice Form", 10/11[9/08]; and

(c) "Amateur MMA Event Report", 10/11[9/08].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601[400 Airport Road, Frankfort, Kentucky 40604,], Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE GINTER, Board Chair

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 7, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five 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, 2012. 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: Angela Robertson, 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, phone (502) 564-0085, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes requirements for MMA contests.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 229.171(2)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures and requirements for MMA contests.

(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 eliminate the option of a ring. require greater security, require a promoter to pay an insurance deductible if necessary, provide more specific requirements relate to drug usage, and impose other requirements.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to protect contestants from injury.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the regulation authorizing the Authority to regulate this profession and sport.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the health of licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 871 amateur mma licensees.

(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: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal if any. In some instances it may cost less to rent a ring as opposed to a cage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Their health will be protected.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 229.171(2)(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

Department of Agriculture

Office of State Veterinarian Division of Animal Health (Amendment)

302 KAR 20:052 Animal Carcass Composting.

RELATES TO: KRS 257.010, 257.160(1)-(2)

STATUTORY AUTHORITY: KRS 257.160(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160(3) authorizes the State Board of Agriculture to promulgate administrative regulations to implement KRS 257.160. KRS 257.160(1)(f) allows disposal of animal carcasses by composting if the disposal is performed in an approved facility and according to the board's administrative regulations. This administrative regulation establishes required procedures for animal carcass composting.

Section 1. Definitions. (1) "Agriculture operation" is defined by KRS 224.71-100(1).

(2) "Animal" means fish and any member of the equine, ovine, bovine, porcine, [~~feline, canine,~~] caprine, [~~lapin,~~] bison, cervidae, camelid[~~camelid~~], ratite, and avian species.

(3)[(2)] "Compost" is defined by KRS 257.010(6)[(5)].

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~~(4) [(3)]~~ "Owner" is defined by KRS 257.010(14) [(42)].

Section 2. Registration [Permit] Required. (1) Except as provided in subsection (5) of this section, all persons or entities operating a composting facility shall register with the State Veterinarian. [The State Veterinarian shall issue permits for animal composting facilities. The cost of the permit shall be twenty-five (25) dollars per year. The permit shall be renewed at five (5) year intervals.]

(2) Registration [A permit application] shall include the name and address of the compost owner, the location of the composting facilities, and a description of the facilities [and composting procedure].

(3) All animal composting facilities shall be subject to inspection by the State Veterinarian or his representative.

(4) Any animal carcasses not composted shall be disposed of in a manner consistent with KRS 257.160.

(5) Registration of composting facilities shall not be required for an agriculture operation, if composting is not for a commercial purpose.

Section 3. Composting [Permitted] Facilities. (1) All composting [Permitted] facilities shall be constructed to meet:

(a) Guidelines established by the University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166"; and

(b) The requirements of the Kentucky Agriculture Water Quality Plan.

(2) All processing of dead animals shall be done within the composting [permitted] facility. ~~[(3) Dead animals to be composted shall be temporarily stored indoors on floors constructed of concrete or soil-cement as identified in the University of Kentucky College of Agriculture Cooperative Extension Service publication "Using Soil-Cement on Horse and Livestock Farms: ID-176".]~~

~~(3) [(4)]~~ Hazardous materials shall not be used in the composting procedure.

~~(4) [(5)]~~ Reasonable and cost-effective efforts shall be taken to prevent odor, insects, and pests. All carcasses shall be inaccessible to scavengers, livestock, and live poultry.

~~(5) [(6)]~~ Ruminant animals may have the rumen vented prior to composting.

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

(a) University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166", 2-2008; and

(b) Kentucky Agriculture Water Quality Plan (October 1996, revised May 1999); and

~~(c) University of Kentucky College of Agriculture Cooperative Extension Service publication "Using Soil-Cement on Horse and Livestock Farms: ID-176", 8-2009].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 100 Fair Oaks, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: November 10, 2011

FILED WITH LRC: November 10, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 10 am at 100 Fair Oaks Lane 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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, 2012. Send written notification of intent to be heard at

the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides requirements for composting animal carcasses in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.160(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by administering KRS 257.160(3) though establishing and modifying composting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the composting requirements for animals in the state. This regulation will make it easier for the animal owner to compost the animal by not having to seek a permit and have a site visit prior to operation.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation eliminates the need for a permit, and the charge to obtain a permit. This amendment reduces the regulatory burden on animal owners.

(b) The necessity of the amendment to the administrative regulation: This amended regulation changes eliminates the need for the KDA to inspect the site prior to the composting process. Due to staff workload and funding, this change is necessary.

(c) How this amendment conforms to the content of the authorizing statutes: The amendments conform to the statutes by establishing composting requirements.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation makes the changes necessary to keep composting requirements current with needed animal health protection. The changes shift the role of the KDA to complaint response and compliance assistance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture and animal producers in the state who may chose to compost rather than use other disposal methods.

(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: Animal producers may elect to compost at their option. Should they do so they must comply with the regulation. The owners of the deceased animals will have a reduced burden by not having to seek a permit or pay for the permit fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Animal producers may elect to compost at their option. The fee for a permit is eliminated; therefore the costs will be zero.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment saves the producer time in applying for a permit, and eliminates costs for composting.

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

(a) Initially: No new additional costs.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDA general funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. The fee has been eliminated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee has been eliminated; therefore no direct or indirect fees are applicable to the owners of animal carcasses.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture will be impacted as the program requirements are changing to be less cumbersome to the producer.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.160

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero. The fee for this program is being eliminated.

(b) How 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? Because the KDA role will be response driven, an estimate cannot be provided. The costs incurred will be less than current expenditures that are paid for out of general agency funds.

(d) How much will it cost to administer this program for subsequent years? Because the KDA role will be response driven, an estimate cannot be provided. The costs incurred will be less than current expenditures that are paid for out of general agency funds.

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 Highways Division of Maintenance (Amendment)

603 KAR 4:035. Logo signs; placement along fully controlled and partially controlled access highways.

RELATES TO: KRS ~~45A~~ 177.0734-177.0738

STATUTORY AUTHORITY: KRS 177.0736, 177.0738, 177.0739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0736 and 177.0738 require the Commissioner of the Department of Highways to promulgate administrative regulations for the erection of specific service signs on fully controlled access highways and at interchanges on partially controlled access highways. This administrative regulation ~~establishes~~ sets forth the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs ~~designed to inform motorists where travel-related goods and services are available~~.

Section 1. Definitions. (1) "Clear zone" means the area beginning at the edge of the traveled way that is available for safe use

by errant vehicles ~~between the edge of the driving lane of a fully controlled or partially-controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway~~.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 6:070 to administer the specific service signing program in Kentucky. The activities of ~~a~~ the contractor ~~shall~~ include:

~~(a) Marketing;~~

~~(b) Determining~~ Determination of business eligibility;

~~(c) Maintenance, erection, and removal of the specific service signs; and~~

~~(d) Installation and removal of logo signs.~~

(3) "Contract year" means a fiscal year that is July 1 through the following June 30.

(4) "Cover" means to place a protective shield over a logo sign to prohibit viewing of the sign.

(5) ~~"Double-exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.~~

~~(6) "Fully controlled access highway" is defined by~~ is defined in KRS 177.0734(1).

~~(6) [(7)] "Highway guide sign" means an official highway sign that~~ which is erected by the Department of Highways to:

~~(a) Give directions;~~

~~(b) Furnish advance notice of the approach to an intersection or interchange;~~

~~(c) Direct drivers into appropriate lanes;~~

~~(d) Identify a route~~ and directions on the routes;

~~(e) Indicate the distance to a destination~~ Show distances to destinations; or

~~(f) Provide information or assistance to the traveling public including~~ Indicate access to general:

1. Motorist services;

2. Rest areas;

3. Scenic areas; or

4. Recreational areas; ~~and~~

~~(g) Provide other information of assistance to the traveling public~~.

~~(7) [(8)] "Interchange" means a system of interconnecting roadways providing for traffic movement between two (2) or more highways that do not intersect at grade~~ junction of two (2) or more highways by a system of separate levels that permit traffic to pass from one (1) to another without the crossing of traffic streams.

~~(8) [(9)] "Logo signs" is defined by~~ are defined in KRS 177.0734(2).

~~(9) [(10)] "Motorist service" means a place of business providing one (1) or more MUTCD eligible service such as gas, food, lodging, tourist attractions, or camping facilities~~ or a combination thereof.

~~(10) [(11)] "MUTCD" means Manual on Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.~~

~~(11) [(12)] "Partially controlled access highway" is defined by~~ is defined in KRS 177.0734(4). ~~[(13)] "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.~~

~~(14) "Shopping area" means a group of ten (10) or more retail and other commercial establishments located within close proximity of one another that employ a unifying theme carried out by individual shops in their architectural design or their merchandise.~~

~~(15) "Shopping mall" means a group of retail and other commercial establishments that is 400,000 square feet or more and is planned, developed, owned, and managed as a single property.~~

~~(16) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.~~

~~(12) [(17)] "Specific service signs" is defined by~~ are defined in KRS 177.0734(3).

~~[(18)] "Tourist attractions" means activities or locations that are:~~

~~(a) Natural phenomena;~~

~~(b) Historic;~~

~~(c) Cultural;~~

~~(d) Scientific;~~

~~(e) Educational;~~

- (f) Religious;
- (g) Of natural beauty or naturally suited for outdoor recreation;
- (h) Similar activities of interest to the traveling public; or
- (i) Shopping malls or shopping areas.]

(13)(19) "Trailblazing sign" means a sign that[which] provides directional guidance to a particular cultural or recreational site from other highways in the vicinity.

Section 2. General Provisions. (1) The Commissioner of the[: Department of Highways[:] shall authorize the placement of specific service signs with logo signs within the right-of-way of fully controlled and partially controlled access highways.

(2) The Department of Highways shall control the erection and maintenance of specific service and logo signs in accordance with the["Manual on Uniform Traffic Control Devices"- (] MUTCD)](as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation].

Section 3. Application and Contracts for Specific Service Signs. [(4)] A business shall apply with the cabinet's contractor for a logo or specific service sign[Application for a business to place a logo relating to gas, food, lodging, camping, or tourist attractions on a specific service sign shall be on "Application for Highway Logo Signing" forms.](2) The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form. Addenda to this form may be included in the contract if appropriate].

Section 4. Location and Erection of Specific Service Signs. (1) A specific service sign shall be located and erected according to the MUTCD in Section 2J[A specific service sign bearing separately attached logo signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific service sign shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

(3) A specific service sign shall not be erected:

(a) If there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific service sign;

(b) At an interchange which intersects another limited access facility.

[(c) At an intersection which does not have a convenient reentry in the same direction of travel.

(4)(a) There shall not be more than one (1) specific service sign erected in each direction of an interchange or intersection for the following:

1. "GAS";
2. "FOOD";
3. "LODGING";
4. "CAMPING"; or
5. "TOURIST ATTRACTIONS ".

(b) There shall not be more than four (4) specific service signs erected in one (1) direction of travel for an interchange or intersection.

(c) In one (1) direction of travel, the successive signs shall be erected in the order of "TOURIST ATTRACTIONS" or "CAMPING", "LODGING", "FOOD", and "GAS" unless a combination specific service sign is erected in accordance with Section 5(9) or (10) of this administrative regulation.]

(d) At an interchange with insufficient space available in a single direction for four (4) specific service signs, or]

(2) At an interchange with a request for more[all five (5)] types of services than signs permitted by the MUTCD, service signing priority[preference] shall be in the order "gas", "food", and "lodging", with the remaining services and attractions determined by distance from the interchange[: "camping", and "tourist attractions "], with "gas" having the highest priority].

(3) If there is sufficient space available in a single direction for the maximum number of specific signs permitted by the MUTCD,

the signs closest to the interchange will be for "gas", "food", and "lodging".

(4) [(5)] A[The] specific service sign shall be located to avoid visual conflict with other signs within the highway right-of-way[:]

(a) Take advantage of natural terrain;

(b) Have the least impact on the scenic environment; and

(c) Avoid visual conflict with other signs within the highway right-of-way].

(5) [(6)] Specific service signs that have unprotected sign supports located within the clear zone shall be of a breakaway design.[Section 5. Interchange Specific Service Sign Composition. (1) A specific service sign shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific service sign shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific service sign.

(7)(a) For single exit interchanges, a standard full-size specific service sign shall accommodate a maximum of six (6) logo signs.

(b) If the number of businesses does not warrant a full-size sign, a half-size or combination sign may be used.

(8)(a) At a double exit interchange, the specific service sign shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display logo signs for the first exit and the lower section shall display logo signs for the second exit.

(c) Each section shall accommodate a maximum of four (4) logo signs for each service per exit, with the total number of signs not to exceed six (6).

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific service sign may be omitted or a single exit interchange sign may be used.

(9) Logo signs for two (2) types of services may be displayed on the same combination specific service sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange;

(b) Up to four (4) logo signs may be displayed for a type of service in combination on a sign;

(c) If four (4) logo signs are displayed for one (1) type of service on a combination specific service sign, more than two (2) logo signs for the other type of service shall not be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective logo signs.

(10) Logo signs shall not be combined on a sign as described in subsection (9) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) logo signs for the two (2) types of services displayed in combination.

(11)(a) Except at an unnumbered exit, the exit number shall be displayed above the name of the type of service; and

(b) At an unnumbered exit, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the name of the type of service.

Section 6. Ramp Signs. (1) At a single exit interchange, an exit ramp sign shall be installed except that the logo for a facility visible from the ramp terminal may be omitted.

(2) The logo sign on a ramp sign shall be a duplicate of the corresponding logo installed along the main roadway, but reduced in size.

(3) A ramp sign for a service facility not visible from the ramp terminal may include the distance to the service facility. Direction to the service facility shall be indicated by an arrow.

(4) Ramp signing may be used on ramps at double-exit interchanges.

Section 7. Logo Signs. (1) Each logo sign shall have a legend and border. Except, if the business identification symbol or trademark is used alone for a logo sign, the border may be omitted.

(2) Each logo sign on the specific service sign shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol, or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between logo signs on specific service signs shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The reflectivity, material composition, and adhesiveness of a logo sign shall comply with the "Standard Specifications for Road and Bridge Construction" (2000 Edition and 2001 Supplement).]

(6)[(8)] If a business ceases to exist or is not in operation for thirty (30) days, the logo sign shall be immediately covered or removed by the contractor[as circumstances of each closing or cessation of business dictate].

(7)[(9)] A[Any] business that[which] operates on a seasonal basis shall remove or cover[make provisions for removing or covering] a permitted logo sign during the off season and[. A business of this type] shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.[(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the logo sign.

(11)(a) With the exception of "Open 24 Hours" or "24 Hours", descriptive advertising words, phrases or slogans shall not be allowed on a logo sign; i.e., "Joe's 24-Hour Market", "Free Coffee", "Credit Cards Accepted", etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a logo sign; i.e., "hotel", "motel", "inn", "lodge", "restaurant", "cafe", "cafeteria", "diner", or others with a similar meaning.

(c) The word "Diesel" on a "GAS" logo sign shall be permitted.

(12) If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a specific service sign or on a ramp sign to indicate the distances to the individual businesses.

(13)(a) The Transportation Cabinet shall review and approve the design of a "TOURIST ATTRACTIONS" logo sign prior to its placement on a panel.

(b) The Transportation Cabinet shall not approve the design of a logo sign which would be difficult to comprehend by the traveling public at highway speeds and under normal atmospheric conditions.]

Section 4.[Section 8.] Business Criteria, Eligibility, and Priority.

(1) A motorist service business[located at, or conveniently accessible from, an interchange or intersection of a fully-controlled and partially-controlled access highway] shall be eligible for placement of a logo sign on a specific service sign as established in the MUTCD, Section 2J.

(2) An applicant that applies for a FOOD logo and meets MUTCD requirements shall be designated a tier one (1) applicant.

(3) A tier one (1) applicant that also meets all the following requirements shall be designated a tier two (2) applicant:

(a) Is in continuous operation fourteen (14) hours a day, six (6) days a week;

(b) Has a seating capacity for a minimum of fifty (50) guests at sit-down, eat-in service; and

(c.) Is located within three (3) miles of the interchange.[if it qualifies under the following conditions:

(a) Each business shall offer written assurance that it conforms

with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability, or national origin.

(b) To qualify for a "GAS" logo sign, a business shall:

1. Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and

2. Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone available for use by the traveling public.

(c) To qualify for a "FOOD" logo sign, a business shall:

1. Be licensed in accordance with KRS Chapter 219;

2. Be in continuous operation to serve three (3) meals a day, six (6) days a week;

3. Have a seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and

4. Have a telephone and restroom available for use by the traveling public.

(d) To qualify for a "LODGING" logo sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219;

2. Have a minimum of two (2) rooms available for sleeping accommodations; and

3. Have a telephone available for use by the persons staying at the facility.

(e) To qualify for a "CAMPING" logo sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219; and

2. Have a minimum of ten (10) parking accommodations which have modern sanitary facilities and drinking water.

(f) To qualify for a "TOURIST ATTRACTIONS" logo sign, a facility shall:

1. Be an activity or location that is one (1) or more of the following:

a. Natural phenomena;

b. Historic site;

c. Cultural site;

d. Scientific site;

e. Educational site;

f. Religious site;

g. Area of natural beauty;

h. Area naturally suited for outdoor recreation; or

i. Shopping malls or shopping areas.

2. Maintain regular hours for that type of establishment;

3. Be licensed in accordance with KRS Chapter 219, if applicable;

4. Have restroom facilities available for use by the traveling public;

5. Have drinking water available for the traveling public;

6. Have an on-premise or nearby public telephone available for use by the traveling public; and

7. Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces].

(4)(a)[(2)] An application for a logo shall be processed in the order received if space is available on the specific service sign[The eligible business making application for a logo of a specific service which is located nearest to the interchange or intersection shall receive first priority in the selection process].

(b) If a logo sign is full, an applicant shall be placed on a waiting list [Subsequent proximities to the interchange or intersection shall establish subsequent priorities].

(c) A business that is fifteen (15) miles (24.15 kilometers) or more[further than fifteen (15) miles (24.15 kilometers)] from the interchange shall not[be eligible to] qualify for placement of a logo sign.

(d) A[Except, any] business that is fifteen (15) miles (24.15 kilometers) or more[at a distance greater than fifteen (15) miles (24.15 kilometers)] from the interchange with a logo sign in place on January 1, 1994, may continue to display the logo sign until the business fails to meet MUTCD criteria[another criterion of this administrative regulation or is bumped pursuant to Section 9 of this administrative regulation].[(3)(a) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period.

(b) Distance from the interchange shall only be considered in determining priority after the business hours for a qualifying food business have been considered.

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(4) A business with an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a logo sign until the violation has been removed.

(5) A business with an advertisement on an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a logo sign until the violation has been removed.

(6) An activity which is identified at an interchange by a highway guide sign pursuant to Chapter 2F of the "MUTCD" may also be identified with a logo, but shall have a lower priority for selection than any other eligible business with the same activity.]

(5)(7) A business offering more than one (1) motorist service may display a LOGO on more than one (1) specific service sign if space is available [shall not be eligible to display more than one (1) logo sign with the same logo at an interchange or intersection unless no other eligible business has applied for use of the available space on the second specific service sign].

Section 5. Duration[Section 9. Bumping]. (1) A motor service vendor, except for a food vendor, that obtains a logo shall retain that logo until the motor service vendor no longer pays its annual fee or no longer meets MUTCD requirements.

(2)(4) An eligible food business with a higher tier[priority,] pursuant to Section 4[8] of this administrative regulation, shall be permitted to display its sign at the beginning of the next contract year, in the place of a currently displayed, lower tiered[priority] business if:

(a) The specific service sign is fully utilized; and

(b) It files an application by April 1;

(3)(2) The food business with the lower tier that is the greatest distance from the interchange[priority] shall have its logo sign removed at the end of the current contract year.

(4) If more than one (1) applicant applies for an available space for a food logo, the applicant who applied first shall receive the logo.

Section 6.[Section 10.] Fees. (1)(a) The qualifying business shall pay to the cabinet's[department's] contractor an annual fee of \$600 per direction, in advance, for each logo sign placed on the fully controlled access highway for gas, food, and lodging and \$300 for camping and tourist attractions.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the logo sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The annual[yearly renewal] fee and application for renewal shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee shall guaranty[guarantees] that the logo sign shall[will] be displayed for one (1) contract year or portion of the first contract year as long as the business is not in violation of[does not violate any part of] its agreement with the Department of Highways' contractor or the criteria established in the MUTCD.

(2) If a sign for a business is removed or covered for any reason, a fee of \$100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(3) The qualifying business shall be responsible for damage to its logo sign caused by an act of vandalism or natural causes requiring repair or replacement of a logo sign.

(4) The qualifying business[A logo sign] shall provide a new or renovated logo sign if the displayed sign:

(a) Would misinform the traveling public;[or]

(b) Is[unsightly,] badly faded, or in a state of dilapidation; or

(c) Is in need of repair or replacement due to natural causes or an act of vandalism.

Section 7.[Section 11.] Trailblazing Signs For Campgrounds. (1) A[Only those] campground[within] fifteen (15) miles (24.15 kilometers) or less from [of] the centerline of a fully controlled access highway shall be eligible for a new trailblazing sign.

(2)[Only] One (1) specific service trailblazing sign with a logo

may[shall] be erected for each business, and the sign[with a logo]. This sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the applicant business is visible [from a point on] within 300 feet (91.5 meters) of the intersection on the fully controlled access highway [within 300 feet (91.5 meters) prior to intersection].

Section 8.[Section 12.] Measurements. [(1)] Measurements shall be taken from the end of the exit ramp to the main entrance of the business in the selection of a qualified business for a logo sign [shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled or partially controlled access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of logo signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service].

Section 9.[Section 13.] Logo Sign Contract. [(1)(a) A Highway Logo Program Agreement between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a logo sign.]

(1)(a)(b) A[Each] logo sign and contract shall be subject to review by the Transportation Cabinet[at any time].

(b)(c) A contract shall be revoked for a failure to comply with [any of] the requirements established[set forth] in the MUTCD or in this administrative regulation including nonpayment by a[the] participating business[shall be cause for the revocation of a logo sign contract].

(c)(d) If a[the] contract is revoked for cause, the prepaid fees for a contract year or a portion thereof[,] shall not be refunded.

(2)[If the Department of Highways or its contractor determines that a contract, business, or logo sign does not comply with the requirements of this administrative regulation,] The Department of Highways' contractor shall notify the business in writing of a[the] violation. [(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs.]

(3)(4) The Department of Highways contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs if a business has been issued a second notice of noncompliance within[If, in] a single contract year[, a business has been issued a notice pursuant to subsection (2) of this section and is again in noncompliance with this administrative regulation, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs].

Section 10.[Section 14.] Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways shall[may] grant an exemption to a business from the necessity of complying with a requirement set forth in this administrative regulation if:

(a)[It is determined by the commissioner that] The exemption is in the public interest; and

(b) The business conforms to the Federal Highway Administration standards for specific service signs; and

(2) In qualifying for a logo sign, a business that[which] conforms to [all] MUTCD[the] requirements and the requirements established[set forth] in this administrative regulation shall be given a preference over a business not conforming to [all of] the requirements [in qualifying for placement of a logo sign on a specific service sign].

(3) An appeal by a business of the denial of a request for an exemption [by a business to the Commissioner of Highways] shall be filed as established in Section 12 of this administrative regulation[in the form of an appeal as prescribed for in Section 16 of this administrative regulation].

Section 11.[Section 15.] Encroachment Permits. The Department of Highways' contractor shall apply for an encroachment

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permit pursuant to 603 KAR 5:150 for ~~a[each new]~~ specific service sign proposed to be erected, modified, or removed from state-owned right-of-way.

Section 12.~~[Section 46.]~~ Appeal of Department of Highways Action. (1) A business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for ~~a[the]~~ formal hearing shall:

(a) Be filed in writing ~~to[with]~~ the Commissioner, Department of Highways, 200 Mero Street~~[501 High Street]~~, Frankfort, Kentucky 40622; and

(b) State~~[Set forth]~~ the nature of the complaint and the grounds for the appeal.

(3)~~(a)~~~~[Upon receipt of a request for a hearing,]~~ The Office of Legal Services~~for[general counsel of]~~ the Transportation Cabinet shall assign the matter to a hearing officer~~[examiner]~~.

(b) The hearing officer shall issue ~~a[his]~~ recommended order to the Commissioner of the Department of Highways.

(c) The Commissioner of the Department of Highways shall issue ~~a[the]~~ final order~~[of the department]~~ in the~~[this]~~ matter.

(4) A party aggrieved by the final order of the Department of Highways may appeal pursuant to the provisions of KRS 13B.140.~~[Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Highway Logo Signing" forms prepared by Kentucky Logos, Inc. in March 1997;~~

~~(b) "Highway Logo Program Agreement" form prepared by Kentucky Logos, Inc. in March 1997; and~~

~~(c) "Standard Specifications for Road and Bridge Construction," published by the Kentucky Transportation Cabinet (2000 Edition and 2001 Supplement)~~

~~(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4105.~~

~~(b) The material in subsection (1)(a) and (b) of this section also may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286.]~~

STEVE WADDLE, State Highway Engineer

MIKE HANCOCK, Secretary

D. ANN DANGELO, Asst. General Counsel

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 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, 2012. 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 criteria for the erection and maintenance of specific motorist signage designed to inform motorists where travel related goods and services are available.

(b) The necessity of this administrative regulation: KRS 177.0736, 177.038 and 177.0739 require the cabinet to establish by administrative regulation reasonable standards for the erection of specific service signs within highway rights-of-way to provide directional information for businesses offering goods and services in the interest of the traveling public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the specific criteria for erecting and maintaining specific service and logo signage designed to inform motorists where travel-related goods and services are available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide necessary information regarding specific service signs and logo signs.

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

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

These amendments will update and amend the language of the current regulation to reflect MUTCD requirements. Amended language will allow businesses in rural areas that are currently unable to utilize the logo program to do so. These amendments add language that creates Tier 1 and Tier 2 qualifications for businesses in urban areas so that where logo signs are completely filled, Tier 2 businesses will have priority. This will provide greater service to the travelling public by providing them selection of businesses with greater hours of service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language of the existing regulation so that the requirements for specific service signs and logo signs can be clearly understood by the public.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment upgrades language and form but follows the structure provided by KRS 177.0736, 177.0738 and 177.0739.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated information in the requirements for specific service and logo signs.

(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 all business establishments offering goods and services in the interest of the traveling public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments will not any require any additional or different actions by the parties effected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments do not change the current fee structure. A qualifying business pays the cabinet's contractor an annual fee of \$600 for a logo sign for gas, food, and lodging. It pays \$300 for camping and tourist attractions. It pays \$100 for reinstalling or covering a sign.

(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 requirements 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: Road funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The original administrative regulation established fees. These amendments do not change the fee schedule.

(9) TIERING: Is tiering applied? Yes. These amendments create Tier 1 and Tier 2 qualifications for businesses in urban areas.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Department of Highways, Division of Maintenance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.0736, 177.0738, 177.0739

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effects are 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? The amendments to the 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? The amendments 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 Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290 Chapter 45A, 61.878, 163.500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf

or hard-of-hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020 (5), and is limited to a person licensed by the board, as defined at KRS 334A.020 (1).

(6) [(5)] "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) [(6)] "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) [(7)] "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) [(8)] "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(10) [(9)] "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(11) [(40)] "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

(12) [(44)] "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

1. Family practice;

2. General practice; [or]

3. Otolaryngology; or

4. Internal Medicine.

(13) [(42)] "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(14) [(43)] "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a):

(a) Telecommunication devices for the deaf;

(b) Amplifiers;

(c) Voice carry over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Appropriate wireless devices.

(15) [(44)] "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(16) [(45)] "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.

(17) [(46)] "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following. The person:

1. Is in possession of a valid [Kentucky] driver's license or photo ID issued by the state of Kentucky;

2. Is currently registered to vote in Kentucky;

3. Owns an automobile registered in Kentucky [a registered automobile];

4. Filed a Kentucky income tax return for the calendar year preceding the date of application;

5. Is stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or is a dependent of the Armed Forces member; or

6. Is currently enrolled as a student at an institution~~[intuition]~~ of higher learning located in Kentucky and meets the residency requirements of 13 KAR 2:045;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and

2. Assume full responsibility for the equipment;~~and~~

(c) Deaf, hard of hearing, or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment; ~~and~~[-]

(d) In addition to requirements listed in subsection (1)(a), (b), and (c) of this section, an applicant for a wireless STE shall be at least thirteen (13) years of age.

(2) An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form;

(b) Signed and submitted in person or by mail; and

(c) Accompanied by:

1. A copy of a telephone bill showing telephone number and name and address of the person being billed for residential telephone customers;

2. A copy of the applicant's proof of residence; and

3. Document of certification, as required by subsection (4) of this section.

(3) An applicant shall provide additional supporting documentation to verify information provided on the application, if requested by KCDHH.

(4) An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense.

(b) Certification shall be performed and provided by:

1. A licensed physician or licensed APRN;

2. A licensed audiologist;

3. A licensed speech-language pathologist;

4. A licensed hearing instrument specialist; or

5. With prior approval by KCDHH, a~~[A]~~ licensed or certified individual that works for a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals.

(5) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telephone service, including:

(a) Installation of a telephone line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telephone bills.

(6) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(7) KCDHH shall distribute the STE in compliance with:

(a) The Model Procurement Code, KRS Chapter 45A; and

(b) 735 KAR 1:020.

(8) Not more than two (2) STEs one (1) of which shall be a visual, auditory, or tactile signaler, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line.

Section 3. Application Process. (1) The KCDHH staff shall provide assistance in completing forms if requested by an applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dated, and signed by the Telecommunications Access Program staff. The approved date shall determine the first-come, first-serve roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly select and use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1:020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of Vocational Rehabilitation and receives a STE as part of an individual plan of employment, also known as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program;

~~(5) [The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;~~

~~(6) A police report of a stolen device shows the applicant was negligent, for example by leaving the doors to the house or car unlocked or unattended;~~ (7) The applicant has the STE stolen or lost or sold the STE; or

~~(6) [(8)]~~ If replacing the equipment after four (4) years have passed, the original STE is found to be technologically up to date and functional by the KCDHH.

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility when the reapplication is processed. (1) A recipient may apply to replace the original STE if:

(a) The STE is damaged as a result of a natural disaster;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or

(d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

(a) Demonstrate eligibility; and

(b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall first send the damaged equipment to the KCDHH, or directly to the vendor as directed by Telecommunications Access program staff.

(a) If necessary, the KCDHH shall send the damaged STE to the vendor for verification of irreparable~~[unrepairable]~~ damage.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is irreparable~~[unrepairable]~~ due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;
2. Compliance with eligibility criteria established in this administrative regulation;
3. The first-come, first-served provision; and
4. Availability of funds.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, APRN, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on first-come, first-served basis and availability of funds. As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested due to the STE being stolen, then the recipient shall:

- (a) Notify local police within thirty (30) days of the theft;
- (b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and
- (c) Aid in the prosecution of the alleged perpetrator of the theft, if a suspect is identified. (7) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or
2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, the KCDHH shall demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", November 2011 [April 2009], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, Executive Director

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 am, at the office of the Kentucky Commission on the Deaf and Hard of Hearing, located at 632 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011 (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. 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, 2012. 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: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email Row.holloway@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore or Rowena Holloway

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunication Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 as a result of legislation enacted by the General Assembly in 1995. The TAP ensures equal access to telecommunications services by providing specialized telecommunications equipment (STE) to deaf, hard of hearing, speech impaired or deaf-blind consumers. This administrative regulation establishes the criteria for awarding STE to deaf, hard of hearing, speech-impaired or deaf-blind individuals, and includes application and certification procedures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing eligibility requirements, as well as application and certification procedures for the distribution of STE to any deaf, hard of hearing, speech-impaired or deaf-blind person qualified to receive the equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for awarding STE and includes the application and certification procedures.

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

(a) How the amendment will change this existing administrative regulation: This amendment will clarify requirements for acquiring a wireless telecommunications device through the TAP, include additional medical professionals to verify the applicant's hearing loss, and will further clarify eligibility and replacement requirements for equipment. The amendment also limits the distribution of wireless devices to those individuals over the age of thirteen (13), which has been determined through research to be a more appropriate age in which an adolescent is responsible enough to care for the device and is able to exercise more discretion in appropriate use of the device to access communication and emergency warning notifications. Establishing this age limit also reduces fraud, such as a parent acquiring a device for a five (5) year old and utilizing it themselves.

(b) The necessity of the amendment to this administrative regulation: Per KRS 278.548, the Public Service Commission (PSC) has authority to determine the appropriate funding mechanism for the TAP. This amendment is necessary to ensure state funds are used in a fiscally responsible manner for distributing wireless telecommunications equipment by confirming the individual can use the equipment effectively. Additionally, this amendment is necessary to make it more convenient for applicants to have their hearing loss verified, by including previously excluded medical professionals that are qualified to determine the individual's loss and need for specialized telecommunications equipment.

(c) How the amendment conforms to the content of the authorizing statutes: Per requirements in KRS 163.525 this amendment better allows the governing body to establish procedures for the distribution of wireless devices, which are necessary to provide equitable access to telecommunication services and emergency notification to deaf, hard of hearing, speech impaired and deaf-blind consumers.

(d) How the amendment will assist in the effective administration of the statutes: The Federal Telecommunications Act of 1996 was implemented to promote competition, reduce regulations, secure lower prices and higher quality services for telecommunications consumers and encourage the rapid deployment of new tele-

communications technologies. Wireless subscribers to telecommunications access lines has increased substantially in the last two years and that trend is expected to continue as many consumers utilize wireless devices to meet their communication needs. Wireless devices are also used to alert individuals with hearing loss to an emergency. The amendment will allow qualified physicians (Internal Medicine) and Advanced Practice Registered Nurse (APRN) practitioners to verify the consumer's hearing loss. This amendment establishes procedures for the distribution and effective use of technologically advanced equipment to meet the needs of our consumers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for STE's throughout the Commonwealth are affected by this regulation. The program has had more than 22,400 applications since its implementation in 1995. There are 647,000 deaf, hard of hearing, speech impaired or deaf-blind consumers within the Commonwealth that could be eligible for participation in the TAP. KCDHH has contracts with seven vendors to supply the equipment distributed by the TAP. Professional audiologists, speech pathologists and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, refer consumers to the TAP for assistive equipment. State and local governments are positively impacted in that consumers requesting services are able to utilize wireless devices to more equitably access communication with state and 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, 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: Applicant for wireless STEs must be at least 13 years old to apply for wireless devices. Vendors, state and local governments, and medical professionals will not need to take any actions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Professionals and consumers alike will be positively impacted by this amendment as eligible applicants will have access to additional professional verification sources. Consumers receiving equipment will be more responsible for use of the wireless equipment to communicate effectively and fraud and abuse will be reduced due to imposing an age limit on receipt of wireless devices. Vendors will profit from the sale of equipment, as well as increase their consumer base, which in turn will boost a sagging economy. State and local governments will have improved communication with the deaf, hard of hearing, speech impaired and deaf-blind consumers of the Commonwealth.

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

(a) Initially: There will be no additional cost for implementing this amendment. Direct costs for the administrative operation of the TAP and procurement of the STE is covered by restricted funds accrued through a surcharge on all telecommunication access lines within the Commonwealth. However, as the demand for equipment escalates KCDHH has requested an allotment increase of \$254,000 to fully support the administrative functions and equipment purchases to meet the demands of the TAP. Funding is available and is currently collected by the PSC. No new funding source is required to support this amendment.

(b) On a continuing basis: As the demand for equipment increases, the cost of administering the program increases. During FY 10-11 \$797,500 was allotted to the TAP. If the allotment increase is approved, approximately \$1,000,000 would be utilized to administer the TAP.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC authorizes the funding mechanism for the TAP as set forth within KRS 163.525 and collects and distributes the funds per state budgetary discretion.

(7) Provide an assessment of whether an 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 charged to maintain the TAP as the program is funded by a mandated surcharge on telecommunication access lines statewide, collected by the PSC. The funds collected are sufficient to support the additional funding required to support the amendments to this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established or increased by this amendment. The telecommunications access line providers are mandated to collect the funds to support the TAP and those funds are administered by the PSC.

(9) TIERING: Is tiering applied? Tiering is applied in times of 'fiscal constraint', which is defined as seventy-five (75) percent of the TAP funds being disbursed or encumbered. Consumers who are deaf, hard of hearing, speech impaired or deaf-blind and have not previously received equipment are given first priority in times of fiscal constraint.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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 Commission on the Deaf and Hard of Hearing (KCDHH) operates the Telecommunications Access Program (TAP) as mandated by KRS 163.525 and provides specialized telecommunications equipment (STE) to deaf, hard of hearing, speech impaired or deaf-blind consumers. Professional audiologists, speech pathologists and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, are positively impacted by referring consumers to the TAP for assistive equipment at no cost to the agency or the consumer. State and local governments are positively impacted in that consumers requesting services are able to utilize specialized equipment, including wireless devices to more equitably access communication with state and local governments. This administrative regulation amendment will have no direct fiscal impact on these entities, other than KCDHH. All costs associated with the operation of the TAP are covered by restricted funds allocated to the program from the collection of a telecommunications access line surcharge.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky statutes at KRS 163.510, 163.525, 163.527, 278.548 and 278.5499 and provisions of KRS Chapter 13A. Federal mandates at 47 U.S.C. 225 and 42 U.S.C. 12101, including provisions of the Americans with Disabilities Act (ADA) and Section 504 (29 U.S.C. 794) and Section 508 (29 U.S.C. 794d) of the Rehabilitation Act of 1973 as amended.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Both revenues and expenditures for the TAP will increase from the previously allotted \$797,500 per the number of wireless access lines contributing to the surcharge and the number of pieces of equipment distributed through the program. No other state or local government is fiscally impacted by this regulation amendment.

(a) How much 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 has no impact on the current collection of revenue. The surcharge is set based on the number of telecommunication access lines in Kentucky per KRS 278.5499, and currently collects approximately \$1,000,000 annually to fund the TAP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Based

on the number of telecommunication access lines in Kentucky, it is estimated that the surcharge collects approximately \$1,000,000 each year to support the TAP. As more devices are distributed through TAP the collections increase with the number of users statewide. The TAP has requested an allotment increase in the FY 2012-2014 budget preparations to support the demand for equipment through TAP.

(c) How much will it cost to administer this program for the first year? With the inclusion of wireless devices in the TAP it currently costs \$797,500 annually to administer the program and purchase the commodities for consumers, with a 50% expansion anticipated for FY 2012-2014. A waiting list will be established if funds are not available to support the demand for equipment.

(d) How much will it cost to administer this program for subsequent years? The TAP allotment of the surcharge remains at the two cents per telecommunications access line per KRS 278.5499. With the anticipated 50% expansion anticipated in TAP during FY 2012-2014 an allotment increase of \$254,700 has been requested to support the expansion of the program based on constituent need. No additional funds are required other than those already collected by the Public Service Commission through the telecommunications surcharge.

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. This administrative regulation is mandated to comply with the Americans with Disabilities Act (ADA) of 1990 Pub. L. No. 101-336 (42U.S.C.12101) pursuant to Title IV of the ADA (47U.S.C.225), the Federal Communications Commission (FCC) regulations enforcing the Telecommunications Accessibility Enhancement Act of 1988 which established the relay service, and the Rehabilitation Act of 1973, Section 504 (29U.S.C.794) and Section 508 as amended (29 U.S.C.794d).

2. State compliance standards. This administrative regulation was promulgated pursuant to KRS 163.525, mandating implementation of an equipment distribution program to ensure equitable access to telecommunications for the deaf, hard of hearing, speech impaired and deaf blind as established pursuant to KRS 278.548. The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) functions with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of KRS 278.5499. Procedures for application and distribution of equipment are defined in 735 KAR 1:010 and 735 KAR 1:020, in accordance with provisions of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. 42U.S.C.12101 provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities including enforceable standards addressing this discrimination. 47U.S.C.225 mandates provision of telecommunications relay services (TRS) every day, 24 hours a day. TRS is defined as telecommunication transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by any means of telecommunications access with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate. 29U.S.C.794 states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States FCC. This includes removal of architectural, transportation or communication barriers and ensures that federal agencies provide accessibility to disabled individuals, in the development, procurement, maintenance, or use of electronic and information technology, unless an undue burden would be imposed on such an agency. In such case, an alternate

means of accessing the data will be provided to the disabled individuals. 29 U.S.C.794d mandates new opportunities for people with disabilities to use telecommunications are made available and development of technologies that will help achieve accessibility are pursued. Agencies must give disabled members of the public access to information that is comparable to the access available to others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities than mandated by federal requirements. Kentucky's Telecommunication Access Program (TAP) will better meet the needs of our deaf, hard of hearing, speech impaired and deaf-blind consumers, by providing accessible technology, including both landline and wireless devices for those who can responsibly utilize them to access telecommunications and emergency warning notifications. Collection of a surcharge imposed on all telecommunications access lines throughout the Commonwealth is sufficient to cover the costs incurred by the program, including procurement of equipment.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, 163.500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for maintenance and repair.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(6) [(5)] "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) [(6)] "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) [(7)] "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) [(8)] "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(10) [(9)] "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

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~~(11)~~~~(10)~~ "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

~~(12)~~~~(11)~~ "Physician" means a person:

- (a) With a medical degree;
- (b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

- 1. Family practice;
- 2. General practice;~~or~~
- 3. Otolaryngology;~~or~~
- 4. Internal Medicine.

~~(13)~~~~(12)~~ "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

~~(14)~~~~(13)~~ "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a):

- (a) Telecommunication devices for the deaf;
- (b) Amplifiers;
- (c) Voice carry over telephones;
- (d) Captioned telephones;
- (e) Visual, audible, or tactile ring signal devices; and
- (f) Appropriate wireless devices.

~~(15)~~~~(14)~~ "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.

~~(17)~~~~"Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.~~

~~(48)~~ "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to applicants and vendors.

(3) The KCDHH Telecommunications Access Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation. (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, KRS Chapter 45, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipient's Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally-authorized recipient. Any person who attempts to sell or who knowingly purchases stolen equipment shall be prosecuted to the fullest extent of the law.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the applicable~~four~~~~(4)~~

year] warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

- 1. Contact the KCDHH; and
- 2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

- 1. Assume responsibility for monthly maintenance of the telecommunications access line as described in 735 KAR 1:010; and
- 2. ~~Purchase batteries and paper for the STE; and~~
- 3. Pay for other general costs and supplies associated with the functions and use of the STE.

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access Program.

Section 4. Security. (1) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged. ~~(2) If the equipment is stolen, the recipient shall:~~

- ~~(a) Notify local police within thirty (30) days of the theft;~~
- ~~(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and~~
- ~~(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.]~~

Section 5. Maintenance and Repair Procedures. (1) A recipient shall report equipment in need of repair to the KCDHH. Telecommunications Access Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

- (a) Report the problem to the manufacturer;
- (b) Ask that the manufacturer pay for shipping the defective equipment:

1. To the manufacturer's designated place of repair; and

2. Back to the recipient, once repaired.

(3) The recipient shall determine from the contracted repair agent whether the STE is repaired or is not repairable. The recipient shall obtain and provide verification of the transaction to KCDHH. If the warranty period has ended, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address.

VIRGINIA L. MOORE, Executive Director

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2011 at 10:00 am, at the office of the Kentucky Commission on the Deaf and Hard of Hearing, located at 632 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2011 (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. 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, 2012. 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: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email row.holloway@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia L. Moore, or Rowena Holloway

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunications Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 as a result of legislation enacted by the General Assembly in 1995. The TAP ensures equal access to telecommunications services by providing specialized telecommunications equipment (STE) to citizens of the Commonwealth who are deaf, hard of hearing, speech impaired or deaf-blind. This administrative regulation establishes the processing system for vendor participation in the TAP as well as outlining requirements for the security, maintenance and repair of the STE distributed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party telecommunication access line.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the processing system for vendors, security, and the maintenance and repair of equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the processing requirements for vendors to distribute telecommunication devices as well as outlining security, maintenance and repair provisions of the distribution system.

(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 provide procedures for vendor participation in the distribution of wireless telecommunications devices through the TAP. The amendment also includes additional medical professionals allowed to sign and verify the applicant's hearing loss and further clarifies when a vendor is obligated to provide a replacement for the distributed equipment.

(b) The necessity of the amendment to this administrative regulation: Per KRS 278.548 the Public Service Commission (PSC) has authority to determine the appropriate funding mechanism for the TAP. This amendment is necessary to incorporate procedures for vendors to distribute wireless telecommunication devices through the TAP and sets the standards for security, maintenance and repair of equipment purchased by the TAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows the governing body to refine procedures for vendors of wireless devices necessary to provide equitable access to telecommunications services.

(d) How the amendment will assist in the effective administration of the statutes: The Federal Telecommunications Act of 1996 was implemented to promote competition, reduce regulations, secure lower prices and higher quality services for telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. This amendment establishes a processing system for vendor participation, security and maintenance and repair of specialized equipment distributed to meet the needs of the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Vendors who seek to do business with the Commonwealth are affected by this regulation. The TAP has had more than 22,400 applications since its implementation in 1995. There are 647,000 deaf, hard of hearing, speech impaired or deaf-blind consumers within the Commonwealth that could potentially be eligible to receive specialized equipment through the TAP. Currently KCDHH has contracts with seven vendors to supply the equipment distributed by TAP. Individuals will benefit from the enhanced security, maintenance and repair procedures outlined as requirements within this regulation. Organizations and state or local governments are not affected by this amendment, which pertains to specialized telecommunications equipment vendors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is needed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Vendors will profit from the sale of specialized equipment, as well as increase their consumer base, which in turn will boost a sagging economy. Consumers will benefit from requirements within this regulation regarding the security, maintenance and repair of equipment distributed through the TAP.

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

(a) Initially: There will be no additional cost for implementing this amendment. Direct costs for the administrative operation of the TAP and procurement of the STE is covered by restricted funds accrued through a surcharge on all telecommunication access lines within the Commonwealth. However, as the demand for equipment escalates KCDHH has requested an allotment increase of \$254,000 to fully support the administrative functions and equipment purchases to meet the demands of the TAP. Funding is available and is currently collected by the PSC. No new funding source is required to support this amendment.

(b) On a continuing basis: There will be no additional cost for implementing this amendment on an ongoing basis. As the demand for equipment increases, the cost of administering the program increases. During FY 10-11 \$797,500 was allotted to the TAP. If the allotment increase is approved, approximately \$1,000,000 would be utilized to administer the TAP.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC authorizes the funding mechanism for the TAP as set forth within KRS 163.525.

(7) Provide an assessment of whether an 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 charged to maintain vendors within the TAP as the program accrues sufficient funds collected from telecommunication providers to support the amendments to this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established or increased by this amendment as the TAP is funded by a surcharge on telecommunication access lines and those funds are administered by the PSC.

(9) TIERING: Is tiering applied? Tiering is applied in times of 'fiscal constraint', which is defined as seventy-five (75) percent of the TAP funds being disbursed or encumbered. Consumers who are deaf, hard of hearing, speech impaired or deaf-blind and have not previously received equipment are given first priority in times of fiscal constraint. If funds are available, consumers are permitted to reapply and receive new equipment once every four years. Vendors must comply with all requirements of the contract per [KRS Chapter 45A, Kentucky Model Procurement Code](#).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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 Commission on the Deaf and Hard of Hearing (KCDHH) operates the Telecommunications Access Program (TAP) as mandated by KRS 163.525 and provides specialized telecommunications equipment (STE) to deaf, hard of hearing, speech impaired or deaf-blind consumers. Professional audiologists, speech pathologists and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, are positively impacted by referring consumers to the TAP for assistive equipment at no cost to the agency or the

consumer. State and local governments are positively impacted in that consumers requesting services are able to utilize specialized equipment, including wireless devices, to more equitably access communication with state and local governments. This administrative regulation amendment will have no direct fiscal impact on these entities, other than KCDHH. All costs associated with the operation of the TAP are covered by restricted funds allocated to the program from the collection of a telecommunications access line surcharge.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky statutes at KRS 163.510, 163.525, 163.527, 278.548 and 278.5499 and provisions of KRS Chapter 13A. Federal mandates at 47 U.S.C. 225 and 42 U.S.C. 12101, including provisions of the Americans with Disabilities Act (ADA) and Section 504 (29 U.S.C. 794) and Section 508 (29 U.S.C. 794d) of the Rehabilitation Act of 1973 as amended.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Both revenues and expenditures for the TAP will increase from the \$797,500 allotted per the number of wireless access lines contributing to the surcharge and the number of pieces of equipment distributed through the program. No other state or local government is fiscally impacted by this regulation amendment. All costs associated with the operation of the TAP are covered by restricted funds allocated to the program from the collection of a telecommunications access line surcharge.

(a) How much 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 has no impact on the current collection of revenue to fund the TAP, as the surcharge is set based on the number of telecommunication access lines in Kentucky which is now set per KRS 278.5499.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Based on the number of telecommunication access lines in Kentucky, it is estimated that the program will collect approximately \$1,000,000 each year to support the TAP. As more devices are distributed through TAP the collections increase with the number of users statewide.

(c) How much will it cost to administer this program for the first year? With the inclusion of wireless devices in the TAP it currently costs \$797,500 annually to administer the program and purchase the commodities for consumers, with a 50% expansion anticipated for FY 2012-2014. An allotment increase of \$254,700 has been requested in the FY 2012-2014 budget preparations to support expansion of the TAP.

(d) How much will it cost to administer this program for subsequent years? The TAP funding base remains at the two cents per telecommunications access line collected per KRS 278.5499. With the anticipated 50% expansion anticipated in TAP during 2012-2014 and allotment increase of \$254,700 has been requested based on constituent need. No additional funds are required other than those already collected by the Public Service Commission through the telecommunications surcharge.

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. This administrative regulation is mandated to comply with the Americans with Disabilities Act (ADA) of 1990 Pub. L. No. 101-336 (42U.S.C.12101) pursuant to Title IV of the ADA (47U.S.C.225), the Federal Communications Commission (FCC) regulations enforcing the Telecommunications Accessibility Enhancement Act of

1988 which established the relay service, and the Rehabilitation Act of 1973, Section 504 (29U.S.C.794) and Section 508 as amended (29 U.S.C.794d).

2. State compliance standards. This administrative regulation was promulgated pursuant to KRS 163.525, mandating implementation of an equipment distribution program to ensure equitable access to telecommunications for the deaf, hard of hearing, speech impaired and deaf blind as established pursuant to KRS 278.548. The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) functions with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of KRS 278.5499. Procedures for application and distribution of equipment are defined in 735 KAR 1:010 and 735 KAR 1:020, in accordance with provisions of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. 42U.S.C.12101 provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities including enforceable standards addressing this discrimination. 47U.S.C.225 mandates provision of telecommunications relay services (TRS) every day, 24 hours a day. TRS is defined as telecommunication transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by any means of telecommunications access with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate. 29U.S.C.794 states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States FCC. This includes removal of architectural, transportation or communication barriers and ensures that federal agencies provide accessibility to disabled individuals, in the development, procurement, maintenance, or use of electronic and information technology, unless an undue burden would be imposed on such an agency. In such case, an alternate means of accessing the data will be provided to the disabled individuals. 29 U.S.C.794d mandates new opportunities for people with disabilities to use telecommunications are made available and development of technologies that will help achieve accessibility are pursued. Agencies must give disabled members of the public access to information that is comparable to the access available to others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities than mandated by federal requirements. Kentucky's Telecommunication Access Program (TAP) will better meet the needs of our deaf, hard of hearing, speech impaired and deaf-blind consumers, by providing accessible technology, including both landline and wireless devices for those who can responsibly utilize them to access telecommunications and emergency warning notifications. Collection of a surcharge imposed on all telecommunications access lines throughout the Commonwealth is sufficient to cover the costs incurred by the program, including procurement of equipment.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office for the Blind (Amendment)

782 KAR 1:010. Kentucky Business Enterprises.

RELATES TO: KRS 163.470(11), 34 C.F.R. Part 395, 20 U.S.C. 107b, 107e

STATUTORY AUTHORITY: KRS 163.470(5), 34 C.F.R. 395.4, 20 U.S.C. 107b(5).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. 20 U.S.C. 107b(5) requires the office to promulgate administrative regulations for the operation of the vending facility program. This administrative regulation establishes the operational requirements for the business enterprises program for the federal Randolph-Sheppard Vending Facility Program.

Section 1. Definitions. (1) "Active participation" means an on-going process which is:

(a) Between the office and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures; and

(b) Does not supersede the office's final authority to administer the program.

(2) "Agreement" means a written contract entered into between the office and property management authorizing the establishment of a vending facility and setting forth the service obligations.

(3) "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.

(4) "Counselor" means a vocational rehabilitation counselor in the Office for the Blind.

(5) "Director" means the Division Director of Kentucky Business Enterprises.

(6) "Eligible individual" means a consumer as defined at 782 KAR 1:020, Section1(4).

(7) "Executive director" means the Executive director of the Kentucky Office for the Blind.

(8) "Kentucky Business Enterprises" or "KBE" means a division of the office established by KRS 163.470(11).

(9) "Licensee" means an eligible individual who:

(a) Has successfully completed the KBE Vendor Training Program;

(b) Has been licensed to operate a KBE vending facility; and

(c) Is not operating a vending facility. ~~[(10) "Manager" means a vendor in a vending facility who is responsible for the facility's operation.]~~

~~[(10)]~~ ~~[(44)]~~ "Mediation" means an informal option which allows a vendor to seek resolution of a dispute with an office action which:

(a) Arises from the operation or administration of the vending facility program; and

(b) Adversely affects the vendor.

~~[(11)]~~ ~~[(42)]~~ "Office" means the Office for the Blind which is the state licensing agency for the Randolph Sheppard Vending Facility Program in Kentucky.

~~[(12)]~~ ~~[(43)]~~ "Seniority" means the accumulated period of time during which a vendor has operated KBE vending facilities.

~~[(13)]~~ ~~[(44)]~~ "Trainee" means an eligible individual who has been selected for, and is actively participating in, the KBE Vendor Training Program leading to licensure.

~~[(14)]~~ ~~[(45)]~~ "Vending facility" means a food sales operation within the meaning of 34 C.F.R. 395.1(x) operated on state, federal, or private property under the auspices of KBE by a vendor.

~~[(15)]~~ ~~[(46)]~~ "Vendor" means a licensee responsible for operating a vending facility under terms of an agreement, permit, or contract relating to the vending facility.

~~[(16)]~~ ~~[(47)]~~ "Vendor agreement" means a written contract entered into between the office and a KBE vendor authorizing the vendor to operate a vending facility at a specific location and setting forth the responsibilities of the parties with respect to the vending facility.

Section 2. Training and Licensure. (1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes the criteria established in paragraph (b) of this subsection have been met.

(b) The applicant shall:

1. Meet a visual diagnosis of blind person as defined in the federal Randolph-Sheppard Act at 20 U.S.C. 107e(1) and the definition of blind person established in 34 C.F.R. 395.1(c);

2. Be a citizen of the United States;

3. Be certified that the consumer meets the general criteria of eligibility for vocational rehabilitation services from the office;

4. Have received a high school diploma or GED certification;

5. Have math skills at an eighth-grade level or above;

6. Have financial skills for operating a vending business;

7. Have verbal and communication skills;

8. Have public relations skills;

9. Have personal hygiene and appearance appropriate for meeting the public;

10. Be independent in performing daily living activities; and

11. Have mobility skills; and ~~[-]~~

12. Have reached the age of majority.

(2) KBE screening process for training program.

(a) The screening committee shall be composed of:

1. The KBE division director or designee;

2. The chair of the State Committee of Blind Vendors or designee;

3. A KBE vendor appointed by the chair of the State Committee of Blind Vendors; ~~and~~

4. The Director of Consumer Services or a designee; and ~~[-]~~

5. The KBE assistant division director or designee.

(b) A designee shall not be the counselor of the applicant.

(3) KBE Vendor Training Program.

(a) The KBE training shall provide on-the-job work experience and classroom instruction leading to licensure as a KBE vendor.

(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the State Committee of Blind Vendors to ensure that a trainee, upon completion of the program, demonstrate proficiency in all aspects of KBE vending facility operation.

(c) Upon successful completion of the training program, the office shall award a vendor license to the trainee.

Section 3. KBE Vendor License. (1) License Conditions.

(a) A license to operate a KBE vending facility shall be issued for an indefinite period of time.

(b) The office shall provide management services and training to assist the vendor in fulfilling the terms of the agreement.

(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If information is obtained that the vendor is not meeting the operational standards established in Section 9 of this administrative regulation, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if appropriate, shall be made available to remedy a deficiency. The office may require the vendor to participate in training provided by, or arranged by, KBE if operational standards established in Section 9 of this administrative regulation are not being met.

(d) The office shall terminate the license of a vendor if, after affording the vendor the opportunity for a full evidentiary hearing, the office finds that:

1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement, specific examples of which include, but are not limited to, the filing of false set aside reports, the violation of any state or federal law regarding payment of taxes and labor requirements, and the failure to maintain insurance as required by Section 9(20) of this administrative regulation; or

2. The vendor's vision has improved so that the vendor no longer meets the definition of blind person established in 34 C.F.R. 395.1(c) of the federal implementing regulations to the Randolph-Sheppard Act. In order to ensure compliance, vendors may be required to undergo an ophthalmologic examination. The office shall select and approve the exam provider and is responsible for the costs of such examination.

(2) Leave of absence.

(a) The office may grant a vendor a leave of absence from a vending facility of up to one (1) year for reasons of health, pregnancy, or personal reasons after a written request with justification is approved by the director.

(b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.

(c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:

1. Resign from that vending facility; or
2. Be subject to termination of the vendor agreement to operate the vending facility.

(3) Resignation.

(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

(c) Reentry into KBE and eligibility to bid on a vending facility by an individual that resigned from KBE shall be allowed only upon completion of sufficient training, as determined by the office, if the individual that resigned did so for one (1) calendar year or more prior to their attempt to reenter KBE.

Section 4. Vendor Vacancy. (1) The office shall determine that a vendor vacancy exists if:

- (a) A new vending facility is established; or
- (b) An existing vending facility [manager's] position is vacated.

(2) If a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition. ~~[(3) If the manager's position becomes vacant in a multivendor vending facility, the assistant manager shall assume the manager's position. The assistant position shall be abolished.]~~

Section 5. Vendor Appointment. (1) Announcement of vacancy.

(a) If a vending facility[manager] vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids shall be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for a vacancy by submitting a completed Application for Vending Facility Vacancy Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor or licensee to manage each vending facility.

(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of ~~[no fewer than]~~ three (3) representatives of the State Committee of Blind Vendors, who shall be appointed by the committee chair, on each vending facility manager appointment.

(c) The selection process shall begin with compilation of the seniority of each bidder based on currently existing KBE records. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in such areas as:

1. Customer relations;
2. Cooperation with property management;
3. Cooperation with KBE staff;
4. Complaints and commendations;
5. Timely and accurate submission of monthly financial reports and set-aside payments;
6. Financial management;
7. Recordkeeping;
8. Audit reports; and
9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this subsection or declines the appointment, the director shall apply the criteria of this subsection to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bidder's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on the following equally weighted criteria:

1. KBE final training test score[s] ~~[scores]~~;
2. On-the-job training reports;
3. Formal education; and
4. Prior work history.

(4) Appointment. The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the absence of a written response, the offer of appointment shall be rescinded and the director shall select a new appointee.

(a) If a vendor resigns or abandons a vending facility within six (6) months of appointment to said facility for any reason other than properly documented medical reasons, the vendor shall be ineligible to bid on another vending facility for six (6) months, and may be required to take additional training as determined appropriate by the office.

(5) Emergency appointment.

(a) The office shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to a vending facility vacancy if time does not permit adherence to the vendor appointment process. An emergency appointment may occur for a leave of absence, appointment of a vendor or licensee[manager] to another vacancy, death, abandonment,[or] health emergency, or other similar occurrence.

(b) A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment ~~[and the expected duration of the appointment]~~.

(c) An emergency appointment shall be not more than six (6) months in duration from the time the appointment is made.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) If a license ~~[is in "ready for employment" status and]~~ is placed ~~in~~ as a manager of a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis not to exceed \$5,000. This amount shall be used to reimburse ~~[paid to]~~:

1. The stock wholesalers ~~[inter-accounted to KBE if the initial stock at the vending facility is owned by KBE]; or~~
2. The vendor exiting the vending facility; or ~~[-]~~
3. Both.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee.

(c) Payment for additional stock, above the \$5,000, needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The licensee shall make affordable monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the office's representative.

(2)(a) If a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as provided in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed at the vending facility, whether as the beginning inventory or additional inventory.

(c) The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The vendor shall make affordable monthly payments to KBE up to the value of the stock purchases.

(3)(a) If an emergency appointment of a vendor is made to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. KBE shall purchase needed inventory above the initial amount at the vending facility, at wholesale cost from:

1. The exiting vendor; or
2. Wholesalers.

(b) The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility.

(c) If a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from the exiting vendor or KBE.

(4) If an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) If an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall:

- (a) Accept responsibility for total inventory of the vending facility; and
- (b) Maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Vendor Administrative Remedies and Procedures. (1) Mediation.

(a) Participation in the mediation process shall be voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b)1. Within thirty (30) calendar~~[fifteen (15)-working]~~ days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.

2. The office shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within forty-five (45) calendar~~[thirty (30)-working]~~ days of the receipt of the request.

3. The mediation shall be held at a field office convenient to the aggrieved vendor during regular state working hours.

4. Reasonable accommodations shall be provided upon request.

(c) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and office mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(d) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an evidentiary hearing within thirty (30) calendar~~[fifteen (15)-working]~~ days of the unresolved mediation.

(2) Evidentiary hearing.

(a) If desired, a vendor shall request an evidentiary hearing in writing to the director within thirty (30) calendar~~[fifteen (15)-working]~~ days:

1. Of an unresolved mediation; or
2. From an office action arising from the operation or administration of the vending facility program which adversely affects the vendor.

(b) The office shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.

Section 8. State Committee of Blind Vendors. The State Committee of Blind Vendors shall be established to actively participate with the office in the major administrative and policy decisions affecting the overall administration of the Randolph-Sheppard Vending Facility Program and to perform other functions consistent with 34 C.F.R. 395.14.

(1) Election procedures. The office shall provide for the biennial election of the State Committee of Blind Vendors consistent with procedures established by the general assembly of all blind vendors in accordance with 34 C.F.R. 395.14.

(2) Meetings of the committee.

(a) The State Committee of Blind Vendors shall meet at least quarterly with the director or his designee in attendance. The announcement of the meeting, with the agenda as drafted by the committee chairperson and the director, shall be mailed to the committee members and all vendors and licensees by KBE. Mailings shall be prepared in alternative format as necessary.

(b) The KBE staff shall record the official minutes of meetings and prepare and mail a copy of the minutes to all vendors and licensees after approval by the committee chair. The minutes may be mailed in alternative format as necessary.

(c)1. KBE shall make committee meeting space available to the chairperson for business of the State Committee of Blind Vendors.

2. The director and committee chair shall develop an annual committee budget.

3. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with 200 KAR 2:006.

4. Additional meetings shall be eligible for reimbursement with the approval of the KBE director or office executive director.

(d) The State Committee of Blind Vendors shall adopt bylaws, which shall be approved by the office.

Section 9. Vendor's Rights and Responsibilities. A vendor shall:

(1) Enter into an agreement with the office for the operation of a Randolph-Sheppard vending facility under the auspices of KBE prior to beginning operation of a vending facility;

(2) Operate the vending facility in accordance with accepted-business practices and in compliance with all federal, state, and local laws, regulations, and ordinances applicable to the operation of the vending facility;

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner.

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs;

(5) Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers;

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement;

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold;

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18);

(9) Clean, fill, and service machines and equipment daily to assure proper functioning and report promptly to KBE any needed repair of equipment;

(10) Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if necessary, of the personally owned equipment;

(11) Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the office has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons if selecting substitutes;

(12) Cooperate with vending facility audits that may be performed periodically at KBE expense;

(13) Pay the monthly seven (7)~~five (5)~~ percent set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments shall be received by the office on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer;

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent;

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received;

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check; and

(e) If a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order;

(f) If a vendor is late in making the set aside payment to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one year.

(g) If a vendor is late in making the set aside payment to the office for ninety (90) or more calendar days, or is late in making the set aside payment to the office six (6) or more times in a calendar year, after first affording the vendor an administrative hearing in accordance with Section 7 of this regulation, the vendor is subject to removal from their vending facility.

(14) Pay resaleable stock suppliers promptly and retain all invoices and receipts for three (3) calendar years;

(15) Include rebates, commissions, or bonuses received by the vendor from suppliers as income of the vending facility and account for this income on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form;

(16)(a) Utilize office-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) Make available to the office upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards;

(17)(a) Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the office on or before the 20th of the following month, with the expenses listed deducted as operating expenses on the report:

1. ~~(a)~~ Expendable supplies used in the vending facility;

2. ~~(b)~~ Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;

3. ~~(c)~~ Rental and commission fees paid to building management as stipulated in the vending facility agreement;

4. ~~(d)~~ Telephone and utility expenses of the vending facility;

5. ~~(e)~~ Pest control services;

6. ~~(f)~~ Delivery charges paid on resaleable stock;

7. ~~(g)~~ Janitorial services;

8. ~~(h)~~ Liability insurance;

9. ~~(i)~~ License and permits required by health departments;

10. ~~(j)~~ Employee wages; and

11. ~~(k)~~ Employee fringe benefits;

(b) If a vendor is late in making the monthly vending facility financial report to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one year.

(c) If a vendor is late in making the monthly vending facility financial report to the office for ninety (90) or more calendar days, or is late in making the monthly vending facility financial report to the office six (6) or more times in a calendar year, after first affording the vendor an administrative hearing in accordance with Section 7 of this regulation, the vendor is subject to removal from their vending facility.

(18) Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for any personal use or charitable donation;

(19) Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including local, state, and federal taxes;

(20)(a) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

1. Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. The policies shall insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises; and

2. Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and other insurance coverage required by law for both the vendor and vendor's employees; and

(b) Submit proof of insurance as required by this subsection to KBE annually. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage;

(c) Failure to annually submit proof of insurance as required by this subsection may, after first affording the vendor an administrative hearing in accordance with Section 7 of this regulation, result in termination or suspension of the vendor's license.

(21) Not bind or obligate the office or represent to an entity that the vendor is a legal representative, agency, or employee of the office;

(22) Not remove or move any KBE-owned equipment located at any vending facility without approval from the director;

(23) Maintain a separate business bank account for deposit of all lottery sales and proceeds in a vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation;

(24) Adhere to the initial stock inventory requirements established in Section 6 of this administrative regulation;

(25) Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential;

(26) Participate in training arranged and paid for by the office as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from the office for vending facility management training;

(27) Request access in writing, if desired, to all program and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884, and the federal Randolph-Sheppard Act, 20 U.S.C. 107 through 107f. The data may be made available in alternative format. At a vendor's request, the office shall arrange a convenient time for a staff member to assist in the interpretation of the data; and

(28) Have the opportunity to read and respond to each complaint or commendation placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by registered or certified mail. A response received from the vendor in the complaint or commendation shall be filed with the complaint or commendation in the KBE file.

(29)(a) Vendors that fail to make two (2) consecutive monthly payments in any repayment schedule established pursuant to Section 6 of this administrative regulation shall be prohibited from bidding on a vending facility for one (1) calendar year dating from the date of the second late payment;

(b) Vendors that fail to make a payment in any repayment schedule established pursuant to Section 6 of this administrative

regulation for ninety (90) or more calendar days, or are late in making said payment to the office six (6) or more times in a calendar year, after first affording the vendor an administrative hearing in accordance with Section 7 of this regulation, the vendor is subject to removal from their vending facility.

Section 10. Office's Rights and Responsibilities. The office shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities;

(2) Assist in stocking vending facilities with initial resaleable products in accordance with Section 6 of this administrative regulation;

(3) Provide new and existing vending facilities with sufficient equipment, as determined appropriate by the office, to meet the terms of the permit or agreement for operation of each vending facility. The office shall:

(a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment owned[provided] by KBE;

(c) Approve or deny vendor requests for replacement equipment if justified;

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or agreement obligations. The office shall review vendor requests for additional equipment with accompanying justification for the investment. KBE shall make the final decision and notify the vendor; and

(e) Approve requests, if justified, for vendor-purchased equipment.[:]

(4) Develop financial controls to ensure financial accountability of each vending facility;

(5) Establish a seven (7)[five-(5)] percent set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility;

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks as established in Section 9(13) of this administrative regulation, and take disciplinary action for persistent delinquency or nonnegotiable checks;

(7)(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation; or

(b) Provide, or provide for, temporary assistance or training to a vendor determined to be remiss in recordkeeping or reporting. If the temporary assistance or training does not correct the deficiency, the office may require the vendor to utilize qualified bookkeeping services;

(8) Contract for periodic audits of each vending facility at office expense;

(9) Inventory and establish the wholesale value of the on-hand saleable stock inventory if a vendor leaves a vending facility;

(10) If a vendor appointment is made, take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost;

(11) Determine the product types and quantities necessary for successful operation of a vending facility if appointing a vendor to a vending facility;

(12) Provide each licensee with a copy of this administrative regulation in alternative format as necessary;

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format as necessary;

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, regulations, vending facility service obligations, and generally-accepted business practices; and

(15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors shall be confidential consistent with 34 C.F.R. 361.38. Identifiable personal in-

formation shall include documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be governed by the provisions of 34 C.F.R. 361.38. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within three (3) two-(2) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be public records pursuant to KRS Chapter 61. The KBE files shall include business records concerning the operation of vending facilities and shall be maintained by the office consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Vending Facility Vacancy, February 2001; and

(b) Financial Report, Kentucky Business Enterprises, August 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for the Blind, 275 East Main Street, Mail Stop 2-EJ, Frankfort Kentucky 40621[209 St. Clair Street, P.O. Box 757, Frankfort, Kentucky 40602], Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER H. SMITH, Executive Director

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 2011 at 10:00 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than close of business Friday, December 14, 2011, 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 Friday, January 3, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Patrick B. Shirley, Education and Workforce Development Cabinet, Office of Legal and Legislative Services, 500 Mero Street, Room 306, Frankfort, Kentucky 40601. phone (502) 564-1481, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick B. Shirley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration and regulation of Kentucky's obligation under the Randolph Sheppard Act to issue licenses to blind Kentuckians to operate vending facilities on federal and state property, specifically the provision described in the Randolph Sheppard Act, 20 U.S.C. 107 et seq., and its corresponding regulations, 34 C.F.R. Part 395.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of the Randolph Sheppard Act, 20 U.S.C. 107 et seq., and its corresponding regulations, 34 C.F.R. Part 395.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the

state's issuance of licenses to blind Kentuckians to operate vending facilities on federal and state property as set out in, and mandated by, the Randolph Sheppard Act, 20 U.S.C. 107 et seq., and its corresponding regulations, 34 C.F.R. Part 395.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's issuance of licenses to blind Kentuckians to operate vending facilities on federal and state property as set out in, and mandated by, the Randolph Sheppard Act, 20 U.S.C. 107 et seq., and its corresponding regulations, 34 C.F.R. Part 395.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments are made to adapt the regulations to provide better guidance to blind individuals who have been issued licenses to operate vending facilities on federal and state property. The revisions enhance and more clearly set out expectations and requirements that vendors have in operating their vending facilities, and in paying their required set aside. The regulation addresses what may occur when a vendor abandons or resigns from their vending facility. The regulation more clearly defines what conditions can lead to termination of a vendor's license. The regulation also increases the amount of the set aside that vendors are expected to pay to the agency monthly.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Changes were also needed to make up the shortfall in paying for the vendor's healthcare benefits and retirement. The changes made to the regulation were needed to more clearly define what is expected of the vendors regarding their responsibilities to the agency, as well as operation of their vending facility.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of being issued and maintaining a license to operate vending facilities on federal property.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to vendors should they fail to pay their required set aside in a timely fashion. This amendment increases the set aside and more clearly defines to vendors what may lead to termination of their license, and what may occur should they abandon or resign from their vending facility or the vending program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individuals that will be affected are all individuals that currently have a license to operate vending facilities on federal and state property in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The vendors will be required to pay an increased set aside percentage to the agency each month. The vendors will also be able to better understand the results of their failure to timely pay the set aside each month, resignation from or abandonment of their vending facility, and the conditions that may lead to termination of license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The vendors that are currently operating vending facilities on federal and state property in Kentucky, of which there are 54, will be required to pay 7% of their net profits to the agency instead of the previous 5%.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The vendors will continue to have their health insurance premiums covered, and possibly retirement too if there are sufficient funds, and the agency will no longer have

to expend additional funds from its overall operating budget to pay for these benefits.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Funds received by the Office of for the Blind.

(7) Provide an assessment of whether an 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 vendors will pay an increased set aside amount of 7% of net operating profits as opposed to the previous 5%.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or but does directly increase the set aside percentage that vendors are already expected to pay to the agency.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Office for the Blind, and Kentucky Business Enterprises, a division within the Office for the Blind.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 163.470, 20 U.S.C. 107 et seq., 34 C.F.R. Part 395.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? An additional \$50,000.00.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? An additional \$50,000.00 per year. However, drastic improvement or decrease in the economy can raise or decrease that amount.

(c) How much will it cost to administer this program for the first year? There shall be no cost associated with administering this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall be no cost to the agency in administering this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for:

(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds; or

(b) Hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the

outpatient services they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient services they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of this administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of

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the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Hospitals. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

Section 8. Data Corrections for Ambulatory Facilities. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic trans-

mission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

Section 9. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 10. Extension or Waiver of Data Submission Timelines. (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 11. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with

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KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 12. Working Contacts for Providers. (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 13. Required Data Elements for Hospitals. (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present

	on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

Section 14. Required Data Elements for Ambulatory Facilities. (1) Ambulatory facilities shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Additional data elements, as specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

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Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised ~~October 31, 2011~~~~[April 4, 2011]~~; and
- (b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised ~~October 31, 2011~~~~[April 4, 2011]~~.

(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 4WE, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.900 KAR 7:030.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 25, 2011

FILED WITH LRC: October 28, 2011 at 4 p.m.

A public hearing on this administrative regulation shall, if requested, be held on December 21, 2011, at 9:00 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, 2011, 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, 2012. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated manuals for both hospitals and ambulatory facilities. Revisions to the manual were necessary due to the addition of three payor codes to identify the new Medicaid Managed Care Organizations that will begin operation November 1, 2011. Also, at the request of facilities, three additional payor codes were added to identify the payors Veterans Administration, Auto, and Other Facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the cabinet to publish the data as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with 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: This administrative regulation incorporates by reference updated data reporting manuals. Updated manuals are necessary as newly created payor codes needed to be incorporated into the manuals.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to provide new data submission manuals to facilities that submit data so that newly created payor codes are included in the manual.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by providing a standardized method of reporting by facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions on how to submit required data elements.

(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 approximately 185 hospitals and ambulatory facilities that submit data to the Cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to include newly created payor codes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to include newly created payor codes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Data integrity is improved as all applicable payor codes are now included in the manuals

(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 administrative regulation as the office of Health Policy currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional costs will be incurred.

(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. No new funding will be needed to implement the provisions of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding 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: The administrative regulation does not establish any fees directly or indirectly 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 and the state operated hospital facilities.

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

regulation. KRS 216.2920-216.2929.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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

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

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050 (1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided. The per diem rate for room and board for each facility shall be as follow

Facility	Rate	
Central State Hospital	\$670[\$685]	
Central State - ICF/MR	\$1,185[\$1,025]	
Western State Hospital	\$740[\$720]	
Western State Nursing Facility	\$290[\$350]	
Outwood ICF/MR	\$475[\$390]	
Oakwood Community Center	Unit 1	\$1,115 [\$960]
	Unit 2	\$1,095 [\$940]
	Unit 3	\$1,110 [\$940]
	Unit 4	\$1,130 [\$985]
Hazelwood Center	\$730[\$780]	
Glasgow State Nursing Facility	\$335[\$325]	

Del Maria	\$595[\$640]
Meadows	\$705[\$670]
Windsong	\$635[\$720]
Eastern State Hospital	\$495[\$445]
Volta House	\$730[\$780]

(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

- (a) Physician's services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia;
- (n) Electroshock therapy;
- (o) Physician assistant; and
- (p) Advanced practice registered nurse.

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance, and treatment charges shall be established using the last available cost report adjusted for inflation. Current rates shall be posted at each facility.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on December 21, 2011, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 until the close of business January 3, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275, East Main Street, 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Glenn Bryant or Ijeoma Eneje

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that cabinet facilities maintain the financial ability to care for persons with mental health and mental retardation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2). This administrative regulation requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation at frequent intervals establishes the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet. It enables the cabinet to recoup the actual costs of providing room, board and treatment to persons with mental illness and mental retardation, and to establish a uniform charge rate for each facility.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities operated by the cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the per diem charge covers the actual costs incurred in the rendition of client care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2). The amendment requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1). The amendment requires that every patient admitted to a facility operated by the cabinet, except for prisoners transferred in accordance with KRS 202A.201 shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment at the facilities operated by the Cabinet for Health and Family Services. This charge rate reflects the actual cost of providing these services to clients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state operated facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities operated by the cabinet who have the resources to pay for their care, or who have third party payers other than Medicaid or Medicare.

(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: This administrative regulation will assure that state operated facilities have sufficient revenues to provide the same level of care to indigent citizens as at present.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in their billing system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed appropriately for services and treatments they rendered.

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

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will not be an ongoing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. The facilities operated by the cabinet will be required to change the charge rates on their computerized billing systems.

(7) Provide an assessment of whether an 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 adjusts the charge rates as established by this amendment. These changes are needed to continue the provision of inpatient care at current levels. No increase in funding will be needed because functions of billing and financial record keeping for state operated facilities are currently in place.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes charges for room, board, and treatment at state operated facilities that are currently below cost. Per diem rates are set utilizing the facilities most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the sixteen (16) state operated facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720 (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. This administrative regulation will ensure appropriate charges for services to clients receiving treatment in any of the 16 state operated facilities.

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

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

(c) How much will it cost to administer this program for the first year? There will be any cost associated to administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There will not be any cost related to administering this regulation.

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

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities operated by the cabinet.

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 2011

COUNCIL ON POSTSECONDARY EDUCATION
(New Administrative Regulation)

13 KAR 2:110. Advanced practice doctoral degree programs at comprehensive universities.

RELATES TO: KRS 164.001, 164.020(15), 164.295(3)
STATUTORY AUTHORITY: KRS 164.295(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.295(4) requires the Council on Postsecondary Education, in consultation with the Advisory Conference of Presidents pursuant to KRS 164.021, to promulgate an administrative regulation to establish the criteria and conditions upon which an advanced practice doctoral degree program may be approved for a comprehensive university. This administrative regulation establishes the criteria and conditions for the approval of an advanced practice doctoral degree program.

Section 1. Definitions. (1) "Advanced practice doctorate" means a program of study beyond the master's degree designed to meet the workforce and applied research needs of a profession.

(2) "Board" or "governing board" is defined by KRS 164.001(4).

(3) "College" means an administrative unit within a state university, which consists of related academic disciplines, that offers academic programs but does not have the authority to grant a degree.

(4) "Comprehensive university" is defined by KRS 164.001(7).

(5) "Council" is defined by KRS 164.001(8).

(6) "Learning outcomes" is defined by KRS 164.001(25).

(7) "Postsecondary education system" is defined by KRS 164.001(17).

(8) "Public" is defined by KRS 164.001(19).

(9) "Specialization" means a set of courses designed to develop expertise within a major at the doctoral level.

(10) "Southern Association of Colleges and Schools Commission on Colleges" means the regional body for the accreditation of degree-granting higher education institutions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and Latin America and other international sites

(11) "Strategic agenda" is defined by KRS 164.001(23).

Section 2. General Requirements. (1) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) and the "Proposal for a New Doctoral Program" required by Section 3(5), a comprehensive university shall demonstrate that an advanced practice doctorate adheres to the role and scope of the institution as set forth in its mission statement and as complemented by the institution's academic plan by:

(a) Listing the objectives of the advanced practice doctorate;

(b) Explaining how the advanced practice doctorate relates to the institutional mission and strategic plan;

(c) Explaining how the advanced practice doctorate addresses the state's postsecondary education strategic agenda; and

(d) Explaining how the advanced practice doctorate furthers the statewide implementation plan for the strategic agenda.

(2) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) and the "Proposal for a New Doctoral Program" required by Section 3(5), a comprehensive university shall demonstrate program quality and commitment to student success by:

(a) Listing all learning outcomes;

(b) Explaining how the curriculum achieves the objectives of the advanced practice doctorate by describing the relationship between the overall curriculum or the major curricular components and the objectives;

(c) Highlighting any distinctive qualities of the advanced practice doctorate;

(d) Noting whether the advanced practice doctorate will replace any specializations within another doctorate program;

(e) Including the projected ratio of faculty to students;

(f) Explaining if the comprehensive university will seek specialized accreditation if accreditation exists for the advanced practice doctorate;

(g) Demonstrating that faculty possesses terminal degrees, master's degrees with professional experience in the field of study, and research experience;

(h) Demonstrating that library resources meet standards for study at the doctoral level and in a particular field of study if standards are available from the Southern Association of Colleges and Schools Commission on Colleges or a specialized accrediting agency for a specific field of study;

(i) Demonstrating availability of classroom, laboratory, office space, and specialized equipment;

(j) Explaining the admission and retention standards;

(k) Stating the degree completion requirements;

(l) Describing how the advanced practice doctorate articulates with related programs at other comprehensive universities and at the University of Kentucky and the University of Louisville;

(m) Providing course descriptions for all courses that will be offered as part of the advanced practice doctorate;

(n) Describing alternative methods of program delivery involving use of technology, distance education, or accelerated degree designs;

(o) Describing how the advanced practice doctorate builds upon the reputation and resources of the comprehensive university's existing master's degree program in the field of study;

(p) Explaining the impact of the advanced practice doctorate on undergraduate education at the comprehensive university; and

(q) Discussing the nature and appropriateness of available clinical sites if there is a clinical component to the advanced practice doctorate.

(3) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) and the "Proposal for a New Doctoral Program" required by Section 3(5), a comprehensive university shall demonstrate demand for the advanced practice doctorate and lack of unnecessary duplication by:

(a) Providing evidence of student demand at the regional, state, and national levels;

(b) Identifying the potential pool of students and how potential students will be contacted;

(c) Describing the student recruitment and selection process;

(d) Identifying the undergraduate and master's level programs as well as employers from which students will be identified;

(e) Providing any evidence of a projected net increase in total student enrollments to the campus as a result of the advanced practice doctorate;

(f) Estimating student enrollment, doctoral candidacies, and degrees conferred for the first five (5) years of the program;

(g) Describing the types of jobs available for graduates, average wages for these jobs, and the number of anticipated openings for each type of job at the regional, state, and national levels;

(h) Justifying the advanced practice doctorate based on changes in the field of study or other academic reasons;

(i) Explaining new practice or licensure requirements in the profession and new requirements by specialized accrediting agencies;

(j) Identifying similar advanced practice doctoral programs in the member states of the Southern Regional Education Board; and

(k) Comparing the program to similar programs within Kentucky in terms of curriculum or areas of specialization, student populations, access to similar programs, demand for similar programs, and potential for collaboration between the proposed program and similar programs.

(4) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) and the "Proposal for a New Doctoral Program" required by Section 3(5), a comprehensive university shall demonstrate costs and funding sources for the advanced practice doctorate by:

(a) Identifying any necessary additional resources;

(b) Explaining the financial impact on existing programs and organizational units within the comprehensive university;

(c) Demonstrating sufficient return on investment to Kentucky to offset new costs;

(d) Providing assurance that funding for the program will not impair funding of any existing program at any other comprehensive institution;

(e) Estimating funding available from state, federal, other non-state, tuition, and institutional allocations and reallocations; and

(f) Estimating costs associated with faculty, student employees, graduate assistants, and professional staff; equipment and instructional materials; library materials; contractual services; academic and student support services; other support services; faculty professional development; student space and equipment; faculty space and equipment; and miscellaneous expenses.

(5) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) and the "Proposal for a New Doctoral Program" required by Section 3(5), a comprehensive university shall demonstrate program evaluation procedures by:

(a) Identifying what program components will be evaluated;

(b) Explaining when and how the components will be evaluated;

(c) Identifying who is responsible for the data collection;

(d) Explaining how the data will be shared with faculty;

(e) Explaining how the data will be used for program improvement;

(f) Identifying measures of teaching effectiveness; and

(g) Identifying plans to assess students' post-graduation success.

Section 3. New Advanced Practice Program Application Procedures. (1) A comprehensive university shall submit the "Pre-Proposal for a New Academic Program" to the online Kentucky Postsecondary Program Proposal System (KPPPS) after the pre-proposal has been approved by the appropriate college within the comprehensive university.

(2) After this information is posted to KPPPS, the chief academic officers, or their designees, of the postsecondary education system and Council staff shall have forty-five (45) days to review and comment on the proposed program. The forty-five (45) day time period shall begin on the date that the pre-proposal is submitted.

(3) If another institution or the Council staff expresses concerns about the proposed program, the Council staff may require additional information and may request review by the chief academic officers of the postsecondary education system. If additional information is requested, the proposing institution shall submit that information within thirty (30) days of the request.

(4) Once all concerns have been addressed, the Council staff shall notify the comprehensive university that:

(a) The advanced practice doctoral degree program proposed for that comprehensive university:

(a) has been pre-approved; and

(b) the comprehensive university may continue the process for developing the program.

(5) The comprehensive university shall submit a "Proposal for A New Doctoral Program", which has been approved by the institutional governing board, to the Council within eighteen (18) months of the Council staff's pre-approval.

(6) Upon receipt of the "Proposal for A New Doctoral Program," Council staff shall review the proposal. If Council staff determines that the comprehensive university has met all the requirements per section 2 above, then staff shall recommend the proposal to the Council for approval.

(7) Upon staff recommendation, the Council at its first subsequent meeting after completion of the proposal process shall either:

(a) Approve the proposal; or

(b) Deny and identify deficiencies in the proposal which shall be corrected by the comprehensive university by submitting revised proposal to Council staff within ninety (90) working days.

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

(a) "Kentucky Postsecondary Program Proposal System", November 2011;

(b) "Pre-Proposal for A New Academic Program", November 2011; and

(c) "Proposal for A New Doctoral Program", November 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL PATTON, Chair

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2011, at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification 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, 2012. 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: Dr. Melissa Bell, Senior Associate, Academic Affairs, Council on Postsecondary Education, 1024 Capital, Center Dr., Suite 320, Frankfort, Kentucky, 40601, phone (502)573-1555 ext. 357, fax (502)573-1535, email melissa.bell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Melissa Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and conditions upon which an advanced practice doctoral degree program may be approved for a comprehensive university.

(b) The necessity of this administrative regulation: KRS 164.295(3) requires that the Council on Postsecondary Education, in consultation with the Advisory Conference of Presidents pursuant to KRS 164.021, shall develop criteria and conditions upon which an advanced practice doctoral degree program may be approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.295(4) requires that the Council on Postsecondary Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of KRS 164.295(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria and conditions upon which an advanced practice doctoral degree program may be approved for a comprehensive university.

(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 – this is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A – this is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A – this is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A – this is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are six (6) comprehensive universities affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Institutions will address each of the established criteria by gathering data, analyzing data, and conducting research in order to complete the online Pre-Proposal for A New Academic Program and Proposal for A New Doctoral Program which shall be submitted to the Council on Postsecondary Education for approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each institution already has people and processes in place on its campus for these activities. As such, there should be no new costs to institutions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question? Institutions will be authorized to deliver an advanced doctorate program to address the needs of students and employers in the state.

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

(a) Initially: Existing staff will review application materials. There will be no additional costs as a result of this administrative regulation.

(b) On a continuing basis: Existing staff will review application materials. There will be no additional costs 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: General state appropriations will be used to pay for Council staff.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation treats all comprehensive universities seeking to offer an advanced practice doctoral program 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, advanced practice doctoral programs are approved by the state government's Council on Postsecondary Education.

2. What 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 state government's Council on Postsecondary Education and six comprehensive universities 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 164.295.

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

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

(c) How much will it cost to administer this program for the first year? Existing staff will review application materials. There will be no additional costs as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Existing staff will review application materials. There will be no additional costs as a result of this administrative regulation.

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

Revenues (+/-): The regulation will generate no revenue.

Expenditures (+/-): Existing staff will review application materials. There will be no additional costs as a result of this administrative regulation.

Other Explanation:

KENTUCKY STATE BOARD OF ELECTIONS (New Administrative Regulation)

31 KAR 3:020. Designated disability service agencies.

RELATES TO: KRS 116.048, 42 U.S.C. 1973gg-5

STATUTORY AUTHORITY: KRS 117.015(1)(a), KRS 116.048(1)(d), 42 U.S.C. 1973gg-5(a)(2)(B)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 116.048(1)(d) and 42 U.S.C. 1973gg-5(a)(2)(B) require the Secretary of State to designate as voter registration agencies those agencies that the Secretary determines to be state-funded programs primarily engaged in providing services to persons with disabilities. This administrative regulation sets forth disability service agencies designated to provide voter registration services.

Section 1. Definitions. (1) "Designated agency" means a department, division, or office of state government, or a program supported by state funds which is designated by the Secretary of State through this administrative regulation to provide voter registration services according to KRS 116.048(1)(d).

(2) "Disability Service Agency" means a designated agency that provides state-funded programs primarily engaged in providing services to persons with disabilities.

Section 2. Disability Service Agencies. The following are disability service agencies which shall provide voter registration services to applicants for services through:

(1) Programs offered by the Office of Vocational Rehabilitation and Office for the Blind within the Education and Workforce Development Cabinet;

(2) Programs offered by the Commission for Children with Special Health Care Needs within the Cabinet for Health and Family Services;

(3) Programs offered by the Department for Aging and Independent Living within the Cabinet for Health and Family Services;

(4) Programs offered by the Department of Behavioral Health, Developmental and Intellectual Disabilities within the Cabinet for Health and Family Services; and

(5) Programs offered by the HIV/AIDS Branch of the Division of Epidemiology and Health Planning of the Department for Public Health within the Cabinet for Health and Family Services.

HON. ELAINE WALKER, Chair

APPROVED BY AGENCY: October 18, 2011

FILED WITH LRC: October 31, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on December 22, 2011, at 10:00 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed new 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 new administrative regulation. Written comments shall be accepted until January 3, 2011. Send written notification of intent to

attend the public hearing or written comments on the proposed new administrative regulation to:

CONTACT PERSON: Maryellen B. Allen, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502)573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the disability service agencies designated to provide voter registration services. KRS 116.048 and 42 U.S.C. 1973gg-5 require the Secretary of State to designate as voter registration agencies those agencies that the Secretary determines to be state-funded programs primarily engaged in providing services to persons with disabilities.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure that those agencies that provide state-funded programs primarily engaged in providing services to persons with disabilities are designated by the Secretary of State to provide voter registration services as required by the National Voter Registration Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations governing the conduct of elections. KRS 116.048 and 42 U.S.C. 1973gg-5 require the Secretary of State to designate as voter registration agencies those agencies that the Secretary determines to be state-funded programs primarily engaged in providing services to persons with disabilities. This administrative regulation sets forth the disability service agencies designated to provide voter registration services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statute by designating those disability service agencies that are to provide voter registration services under the provisions of the National Voter Registration Act.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Five departments, divisions or offices of state government or programs supported by state funds which are designated by this administrative regulation to provide voter registration services and the general public who receive services from those agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agencies designated as voter registration agencies pursuant to this administrative regulation must implement, if they have not already done so, a program that distributes with each application for its service, and with each recertification, renewal, or change of address form, the office's own voter registration application form and a declination form and provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own form. The designated agencies must also have a program for transmitting completed voter registration appli-

cations to the county clerk of the applicant's residence.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each agency for providing voter registration services is unknown and will depend on whether the agency is already providing voter registration services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The designated agencies providing voter registration services will be in compliance with the mandates of the National Voter Registration Act.

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

(a) Initially: The costs associated with implementing this administrative regulation are minimal.

(b) On a continuing basis: The costs associated with implementing this administrative regulation on a continuing basis are minimal.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are or will be established.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? A department, division, or office of state government or a program financed by state funds which is designated by this administrative regulation to provide voter registration services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 116.048(1)(d) and 42 U.S.C. 1973gg-5(a)(2).

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

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

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

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation are minimal and are already allocated in the State Board of Elections' operating budget. The costs to the agencies designated are unknown.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation are minimal and are already allocated in the State Board of Elections' operating budget. The costs to the agencies designated are unknown.

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: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973gg-5.
2. State compliance standards: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections and KRS 116.048 which requires the Secretary to designate state agencies providing state-funded programs primarily engaged in providing services to persons with disabilities for the purpose of offering voter registration services.
3. Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 1973gg-5(a)(2) requires each state to designate as voter registration agencies all offices in the state that provide State-funded programs primarily engaged in providing services to persons with disabilities. This administrative regulation designates those state agencies.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 3:011. Quota hunts on Voluntary Hunter Access Program lands.

RELATES TO: KRS 150.010, 150.340, 150.620, 150.990, 7 C.F.R. Part 1410.50

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for deer, turkey, and small game quota hunts on lands enrolled in the Voluntary Hunter Access Program.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(2) "Voluntary Hunter Access Program" means the program offered to Kentucky landowners who are enrolled in the federal Conservation Reserve Enhancement Program that compensates landowners for allowing hunting access on private property.

Section 2. Voluntary Hunter Access Program Quota Hunts. (1) In order to be entered into a quota hunt drawing, a person shall:

- (a) Complete the online application process on the department's website at fw.ky.gov;
 - (b) Select the type of quota hunt;
 - (c) Select a choice of hunt units; and
 - (d) Rank a maximum of three (3) hunt units in the order of the applicant's preference.
- (2) The application periods shall be:
- (a) March 1 to March 15 for spring turkey hunting; and
 - (b) July 1 to July 31 for deer and small game.
- (3) The department shall:
- (a) Extend the application period if technical difficulties prevent applications from being accepted for one (1) or more days during the application period; and
 - (b) Extend the application period by the exact number of days that were lost due to technical difficulties.

(4) Following the application period, the department shall select each permit recipient by a random electronic draw from all eligible applicants.

(5) A quota hunt permit shall not be transferable.

(6) Only permit recipients for a specific quota hunt shall have access to the hunt unit property.

(7) Statewide bag limits apply to each quota hunt.

(8) Property enrolled in the Voluntary Hunter Access Program shall be closed to all other hunters who were not drawn for a quota hunt, including the landowner, during the quota hunt time periods.

(9) A landowner shall be enrolled in the Conservation Reserve Enhancement Program, pursuant to 7 C.F.R. Part 1410.50, in order to allow hunter access in the quota hunt portion of the Voluntary Hunter Access Program.

Section 3. Deer Quota Hunt Requirements. (1) Unless specified in this section, all statewide deer hunting season requirements shall apply, pursuant to 301 KAR 2:172.

(2) Within each hunt unit, there shall not be more than five (5) permit recipients for each 250 acres.

(3) An applicant for the Voluntary Hunter Access Deer Quota Hunt shall:

- (a) Not apply more than one (1) time per season;
 - (b) Not be selected for more than one (1) hunt unit per season; and
 - (c) Not apply as a group of more than five (5) people;
- (4) A permit recipient:
- (a) Shall only hunt on the hunt unit assigned by the department;
 - (b) Shall not use the following for climbing a tree or attaching a stand to a tree:
 1. A nail;
 2. A spike;
 3. A screw-in device;
 4. A wire; or
 5. A tree climber;
 - (c) May use a portable stand or climbing device that does not injure a tree;
 - (d) Shall plainly mark a portable stand with the hunter's:
 1. Name; and
 2. Address;
 - (e) Shall not use an existing permanent tree stand; and
 - (f) Shall not place, distribute, or hunt over bait, pursuant to 301 KAR 2:178.

Section 4. Turkey Quota Hunt Requirements. (1) Unless specified in this section, all statewide spring turkey hunting requirements shall apply, pursuant to 301 KAR 2:140 and 2:142.

(2) Permit recipients shall be assigned to a hunt unit for a one (1) week period during the statewide spring turkey season.

(3) Within each hunt unit per one (1) week hunting period, there shall be no more than three (3) permit recipients for each 250 acres.

(4) An applicant for the Voluntary Hunter Access Program turkey quota hunt shall:

- (a) Not apply more than one (1) time per season;
- (b) Not be selected for more than one (1) hunt unit per season;
- (c) Not apply as a group of more than three (3) people; and
- (d) Only hunt on the hunt unit and days assigned by the department.

Section 5. Small Game Quota Hunt Requirements. (1) Unless specified in this section, all statewide small game hunting requirements shall apply, pursuant to 301 KAR 2:122.

(2) Within each hunt unit, there shall be no more than three (3) permit recipients per week for each 250 acres.

(3) The season shall begin on the first Saturday in December and continue for eight (8) consecutive weeks, except that small game hunting shall only be allowed on:

- (a) Saturday morning from 8 a.m. until noon; and
 - (b) Wednesday afternoon from noon until 4 p.m.
- (4) An applicant for the Voluntary Hunter Access Program small game quota hunt shall:
- (a) Not apply more than one (1) time per season;

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- (b) Not be selected for more than one (1) hunt unit per season;
- (c) Not apply as a group of more than three (3) people; and
- (d) Only hunt on the hunt unit and days assigned by the department.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 19, 2011

FILED WITH LRC: November 14, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2011, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 3, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for quota hunts on Voluntary Hunter Access Program lands.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to increase hunting opportunity on private lands, manage hunter density on those lands, and to establish requirements for deer, turkey, and small game hunting on those lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing guidelines for establishing quota hunt seasons on Voluntary Hunter Access lands.

(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: Persons who wish to hunt on lands enrolled in the Conservation Reserve Enhancements Program Voluntary Hunter Access program and landowners who are currently enrolled in the Conservation Reserve Enhancement Program may be affected. There are currently approximately 3,000 landowners enrolled in this program and although this is a new quota hunt opportunity, it is unknown how many people will apply in the first 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 need to complete the online application process on the department's website. Selected hunters will have to hunt according to the individual quota hunt guidelines for these sites.

(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 direct cost to hunters as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sportsmen will have the opportunity to apply for quota hunts and landowners enrolled in the program will receive monetary compensation for allowing limited public hunting on Conservation Reserve Enhancement Program lands.

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

(a) Initially: There will be a small cost to the agency to implement this regulation, as the infrastructure for managing these quota hunts is already in place.

(b) On a continuing basis: There will be a small cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Department of Fish and Wildlife Resources has received a federal grant from the USDA to fund this program.

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

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

(9) TIERING: Is tiering applied? Tiering was not used because all persons who apply to hunt on Voluntary Hunter Access Program lands are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

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

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

(c) How much will it cost to administer this program for the first year? There will be a minor cost incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minor cost incurred 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation: This regulation will have negligible impact on local governments, hunters, and local economies, because this program is small in scope relative to the overall hunting-related economic engine in Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(New Administrative Regulation)

907 KAR 17:005. Managed care organization requirements and policies.

RELATES TO: 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030 (2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

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 to qualify for federal Medicaid funds. This administrative regulation establishes the policies and procedures relating to the provision of Medicaid services through contracted managed care organizations pursuant to, and in accordance with, 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438.

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid Program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(3) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(4) "Aged" means at least sixty-five (65) years of age.

(5) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(6) "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance abuse disorder.

(7) "Blind" is defined by 42 U.S.C. 1382c(a)(2).

(8) "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

(9) "Capitation rate" means the negotiated amount to be paid on a monthly basis by the department to an MCO:

(a) Per enrollee; and

(b) Based on the enrollee's aid category, age, and gender.

(10) "Care coordination" means the integration of all processes in response to an enrollee's needs and strengths to ensure the:

(a) Achievement of desired outcomes; and

(b) Effectiveness of services.

(11) "Case management" means a collaborative process that:

(a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;

(b) Is characterized by advocacy, communication, and resource management; and

(c) Promotes quality and cost-effective interventions and outcomes.

(12) "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.

(13) "Child" means a person who:

(a)1. Is under the age of eighteen (18) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D); or

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.

(14) "Chronic Illness and Disability Payment System" is a diagnostic classification system that Medicaid programs can use to make health-based, capitated payments for TANF and disabled Medicaid beneficiaries.

(15) "Commission for Children with Special Health Care Needs" or "CCSHCN" means the Title V agency which provides specialty medical services for children with specific diagnoses and health care needs that make them eligible to participate in programs sponsored by the CCSHCN, including the provision of medical care.

(16) "Community mental health center" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

(17) "Consumer Assessment of Healthcare Providers and Systems" or "CAHPS" means a program that develops standardized surveys that ask consumers and patients to report on and evaluate their experiences with health care.

(18) "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.

(19) "DAIL" means the Department for Aging and Independent Living.

(20) "DCBS" means the Department for Community Based Services.

(21) "Department" means the Department for Medicaid Services or its designee.

(22) "Disabled" is defined by 42 U.S.C. 1382c(a)(3).

(23) "DSM-IV" means a manual published by the American Psychiatric Association that covers all mental health disorders for both children and adults.

(24) "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.

(25) "Early and periodic screening, diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(26) "Emergency services" is defined by 42 U.S.C. 1396u-2(b)(2)(B).

(27) "Encounter" means a health care visit of any type by an enrollee to a provider of care, drugs, items, or services.

(28) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(29) "External quality review organization" or "EQRO":

(a) Is defined by 42 C.F.R. 438.320; and

(b) Includes any affiliate or designee of the EQRO.

(30) "Family planning service" means a counseling service, medical service, or a pharmaceutical supply or device to prevent or delay pregnancy.

(31) "Federally-qualified health center" or "FQHC" is defined by 42 C.F.R. 405.2401(b).

(32) "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(33) "Foster care" means the DCBS program which provides temporary care for a child:

(a) Placed in the custody of the Commonwealth of Kentucky; and

(b) Who is waiting for a permanent home.

(34) "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 – KRS 205.8483.

(35) "Grievance" is defined by 42 C.F.R. 438.400.

(36) "Grievance system" means a system that includes a grievance process, an appeal process, and access to the Commonwealth of Kentucky's fair hearing system.

(37) "Healthcare Effectiveness Data and Information Set" or "HEDIS" means a tool used to measure performance regarding important dimensions of health care or services.

(38) "Health maintenance organization" is defined by KRS 304.38-030(5).

(39) "Health risk assessment" or "HRA" is a health questionnaire used to provide individuals with an evaluation of their health risks and quality of life.

(40) "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

(d) Is an individual who lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.

(43) "Individual with a special health care need" or "ISHCN" means an individual who:

(a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and

(b) May require a broad range of primary, specialized, medical, behavioral health, or related services.

(41) "Initial implementation" means the process of transitioning a current Medicaid or KCHIP recipient from fee-for-service into managed care.

(42) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(43) "Kentucky Health Information Exchange" or "KHIE" means the name given to the system that will support the statewide exchange of health information among healthcare providers and organizations according to nationally-recognized standards.

(44) "Knowingly" is defined by KRS 205.8451(5).

(45) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as managed care organization as defined in 42 C.F.R. 438.2.

(46) "Maternity care" means prenatal, delivery and postpartum care and includes care related to complications from delivery.

(47) "Mandatory enrollment" means the requirement that a recipient enroll in managed care.

(48) "Marketing" means any activity conducted by or on behalf of an MCO in which information regarding the services offered by the MCO is disseminated in order to educate enrollees or potential enrollees about the MCO's services.

(49) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 1:640; and

(e) Meets the resource standards established in 907 KAR 1:645.

(50) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(51) "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

(52) "Medicare qualified individual group 1 (QI-1)" means an eligibility category, in which pursuant to 42 U.S.C.

1396a(a)(10)(E)(iv), an individual who would be a Qualified Medicare beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who are not otherwise eligible for Medicaid under the state plan.

(53) "National Practitioner Data Bank" is an electronic repository that collects:

(a) Information on adverse licensure activities, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists and other practitioners; and

(b) Data on payments made on behalf of physicians in connection with liability settlements and judgments.

(54) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements.

(55) "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and 482.66.

(56) "Olmstead decision" means the court decision of *Olmstead v. L.C. and E.W.*, U.S. Supreme Court, No. 98–536, June 26, 1999 in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

(57) "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

(58) "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

(59) "Physician" is defined by KRS 311.550(12).

(60) "Post stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrollee's condition.

(61) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.

(62) "Primary care provider" means a licensed or certified health care practitioner who meets the description as established in Section 7(6) of this administrative regulation.

(63) "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

(64) "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

(64) "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

(65) "Quality improvement" or "QI" means the process of assuring that covered services provided to enrollees are appropriate, timely, accessible, available, and medically necessary and the level of performance of key processes and outcomes of the healthcare delivery system are improved through the MCO's policies and procedures.

(66) "Qualified alien" means an individual who is lawfully admitted into the United States of America for permanent residence under Title 8 of the United States Code (The Immigrant and Nationality Act) including:

- (a) An asylee;
- (b) A refugee;
- (c) An individual who:

1. Has been paroled into the United States of America for a period of one (1) year;

2. Has had his or her deportation withheld;

3. Has been granted conditional entry into the United States of America; or

4. Is a Cuban or Haitian entrant who was receiving Medicaid benefits on August 22, 1996; or

- (d) A battered immigrant.

(67) "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(68) "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(69) "Recipient" is defined in KRS 205.8451(9).

(70) "Risk adjustment" means a corrective tool to reduce both the negative financial consequences for a managed care organization that enrolls high-risk users and the positive financial consequences for a managed care organization that enrolls low-risk users.

(71) "Rural area" means an area not in an urban area.

(72) "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(73) "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(74) "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B and 907 KAR 1:560.

(75) "State-funded adoption assistance" is defined by KRS 199.555(2).

(76) "State plan" is defined by 42 C.F.R. 400.203.

(77) "Subcontract" means an agreement entered into, directly or indirectly, by an MCO to arrange for the provision of covered services, or any administrative, support or other health service, but does not include an agreement with a provider.

(78) "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101.

(79) "Teaching hospital" means a hospital which has a teaching program approved as specified in 42 U.S.C. 1395x (b)(6).

(80) "Temporary Assistance for Needy Families" or "TANF" means a block grant program which:

- (a) Succeeded AFDC; and

- (b) Is designed to:

1. Assist needy families so that children can be cared for in their own homes;

2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;

3. Prevent out-of-wedlock pregnancies; and

4. Encourage the formation and maintenance of two (2) parent families.

(81) "Third party liability resource" means a resource available to an enrollee for the payment of expenses:

- (a) Associated with the provision of covered services; and

(b) That does not include amounts exempt under Title XIX of the Social Security Act.

(82) "Transport time" means travel time:

- (a) Under normal driving conditions; and

- (b) With no extenuating circumstances.

(84) "Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

(85) "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

(86) "Ward" is defined in KRS 387.510(15).

(87) "Women, Infants and Children program" means a federal-funded health and nutrition program for women, infants, and children.

Section 2. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Enrollment into a managed care organization

shall be mandatory for a Medicaid or a KCHIP recipient except as established in subsection (3) of this section.

(2) The provisions in this administrative regulation shall be applicable to a:

- (a) Medicaid recipient; or

- (b) KCHIP recipient.

(3) The following shall not be required to enroll into a managed care organization:

- (a) A recipient who resides in:

1. A nursing facility for more than thirty (30) days; or

2. An intermediate care facility for individuals with mental retardation or a developmental disability;

- (b) A recipient who is:

1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;

2. Enrolled in another managed care program in accordance with 907 KAR 1:705;

- 3. Receiving:

a. Services through the breast and cervical cancer program pursuant to 907 KAR 1:805;

b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 1:640;

c. Services through a 1915(c) home and community based services waiver program;

d. Hospice services in a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability; or

- e. Medicaid benefits as a Medicaid Works individual;

4. A Qualified Medicare beneficiary;

5. A specified low income Medicare beneficiary;

6. A Medicare qualified individual group 1 (QI-1) individual;

7. A qualified disabled and working individual;

8. A qualified alien eligible for Medicaid benefits for a limited period of time; or

9. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

(4)(a) Except for a child in foster care, a recipient who is eligible for enrollment into managed care shall be enrolled with an MCO that provides services to an enrollee whose primary residence is within the MCO's service area.

(b) A child in foster care shall be enrolled with an MCO in the county where the child's DCBS case is located.

(5) During the department's initial implementation of managed care in accordance with this administrative regulation, the department shall assign a recipient to an MCO based upon an algorithm that considers:

- 1. Continuity of care;

- 2. Enrollee preference of MCO or of an MCO provider; and

- 3. Cost.

(b) An assignment shall focus on a need of a child or an individual with a special health care need.

(6) A recipient shall have fourteen (14) calendar days from the date of the written notification of the MCO assignment referenced in subsection (5) of this section to choose a different MCO.

(7)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two months, shall have an opportunity to choose an MCO during the eligibility application process.

(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO.

(8) Each member of a household shall be assigned to the same MCO.

(9) The effective date of enrollment for a recipient described in subsection (7) of this section shall be:

- (a) The date of Medicaid eligibility; and

- (b) No earlier than November 1, 2011.

(10) A recipient shall be given a choice of MCOs, but not less than two (2).

(11) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility unless the recipient moves to a county in region three (3) as established in Section 28 of this administrative regulation.

(12) A newborn who has been deemed eligible for Medicaid

shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) days.

(13) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:

(a) Within ninety (90) days of the effective date of enrollment; and

(b)1. Annually during an open enrollment period that shall be at the time of an enrollee's recertification for Medicaid eligibility; or

2. Annually during the month of birth for an enrollee who receives SSI benefits;

(c) Upon automatic enrollment under subsection (11) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in paragraph (b) of this subsection; and

(d) When the Commonwealth of Kentucky imposes an intermediate sanction specified in 42 C.F.R. 438.702(a)(3).

(14) Only the department shall have the authority to enroll a Medicaid recipient with a MCO in accordance with this section.

(15) Upon enrollment with an MCO, an enrollee shall receive two (2) identification cards:

(a) A card shall be issued from the department that shall verify Medicaid eligibility; and

(b) A card shall be issued by the MCO that shall verify enrollment with the MCO.

(16)(a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least the following information:

1. The effective date of enrollment;
2. Name, location and contact information of PCP;
3. How to obtain a referral;
4. Care coordination;
5. The benefits of preventive health care;
6. Enrollee identification card;
7. A member handbook; and
8. A list of covered services.

(17) Enrollment with an MCO shall be without restriction.

(18) An MCO shall:

(a) Have continuous open enrollment for new enrollees; and

(b) Accept enrollees regardless of overall enrollment.

(19)(a) A recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid with the exception of:

1. A newborn who shall be enrolled beginning with their date of birth;

2. An unemployed parent who shall be enrolled beginning with the date unemployed parent meets the definition of unemployment in accordance with 45 C.F.R. 233.100; or

3. An enrollee who shall be retro-actively determined eligible for Medicaid.

(b) Retro-active eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

(20) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:

(a)1. On the first day of the month of the original application for eligibility; or

2. On the first day of the month of retroactive eligibility as referenced in subsection (19) of this section, if applicable; and

(b) No earlier than November 1, 2011.

(21) A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 3. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department shall have the authority to disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall:

(a) Become effective on the first day of the month following disenrollment; and

(b) Occur:

1. If the enrollee:

a. No longer resides in an area served by the MCO;

b. Becomes incarcerated or deceased; or

c. Is exempt from managed care enrollment in accordance with Section 2(3) of this administrative regulation; or

2. In accordance with 42 C.F.R. 438.56.

(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid program;

(b) Is abusive or threatening;

(c) Becomes deceased; or

(d) No longer resides in an area served by the MCO.

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in an enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).

(b) If the department fails to make a determination within the timeframe specified in subsection (6)(a), the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the MCO shall

(a) Assist in the selection of a new primary care provider, if requested;

(b) Cooperate with the new primary care provider in transitioning the enrollee's care; and

(c) Make the enrollee's medical record available to the new primary care provider, in accordance with state and federal law.

(8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 4. Enrollee Rights and Responsibilities. (1) An MCO shall have written policies and procedures:

(a) To protect the rights of an enrollee that includes the:

1. Protection against liability for payment in accordance with 42 U.S.C. 1396u-2(b)(6);

2. Rights specified in 42 C.F.R. 438.100;

3. Right to prepare an advance medical directive pursuant to KRS 311.621 through KRS 311.643;

4. Right to choose and change a primary care provider;

5. Right to file a grievance or appeal;

6. Right to receive assistance in filing a grievance or appeal;

7. Right to a state fair hearing;

8. Right to a timely referral and access to medically indicated specialty care; and

9. Right to access the enrollee's medical records in accordance with federal and state law.

(b) Regarding the responsibilities of enrollees that include the responsibility to:

1. Become informed about:

a. Enrollee rights specified in subsection (1) of this section; and

b. Service and treatment options;

2. Abide by the MCO's and department's policies and procedures;

3. Actively participate in personal health and care decisions;

4. Report suspected fraud or abuse; and

5. Keep appointments or call to cancel if unavailable to keep an appointment.

(2) The information specified in subsection (1) of this section, shall meet the information requirements established in 42 C.F.R. 438.10.

Section 5. Enrollee Grievance System. (1) An MCO shall have an internal grievance system in place that allows an enrollee or a provider on behalf of an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 424 and 42 U.S.C. 1396u-2(b)(4).

(2) An enrollee shall have a right to a state fair hearing in accordance with KRS Chapter 13 B without exhausting an MCO's internal appeal process.

(3) An MCO shall have written policies and procedures describing how an enrollee shall submit a request for a:

- (a) Grievance or an appeal with the MCO; or
- (b) State fair hearing in accordance with KRS Chapter 13B.

(4) A legal guardian of an enrollee who is a minor or an incapacitated adult, a representative of an enrollee as designated in writing to an MCO, or a provider acting on behalf of an enrollee and with the enrollee's written consent, has the right to file a grievance on behalf of the enrollee.

(5) An enrollee shall have thirty (30) calendar days from the date of an event causing dissatisfaction to file a grievance orally or in writing with the MCO.

(6) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(7) An investigation and final resolution of a grievance shall:

- (a) Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and
- (b) Include a resolution letter to the enrollee that shall include:
 - 1. All information considered in investigating the grievance;
 - 2. Findings and conclusions based on the investigation; and
 - 3. The disposition of the grievance.

(8) An enrollee shall have thirty (30) calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.

(9) A legal guardian of an enrollee who is a minor or an incapacitated adult, a representative of the enrollee as designated in writing to an MCO, or a provider acting on behalf of an enrollee with the enrollee's written consent, shall have the right to file an appeal of an adverse action on behalf of the enrollee.

(10) An MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.

(11) An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action is treated as an appeal to establish the earliest possible filing date for the appeal.

(12) An oral appeal shall be followed by a written appeal that is signed by the enrollee within ten (10) calendar days.

(13) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution, unless an expedited resolution has been requested.

(14) An MCO shall extend the thirty (30) day timeframe for resolution of an appeal in subsection (11) of this section by fourteen (14) calendar days if:

- (a) An enrollee requests the extension; or
- (b) 1. An MCO demonstrates to the department that there is need for additional information; and
- 2. The extension is in the enrollee's interest.

(15) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.

(16) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.

(17) An MCO shall:

(a) Continue to provide benefits to an enrollee until one of the following occurs:

- 1. The enrollee withdraws the appeal;
- 2. Fourteen (14) days have passed since the date of the resolution letter, provided the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or
- 3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals when the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal in paragraph (b) of this subsection by up to fourteen (14) calendar days if the

enrollee requests the extension or the MCO demonstrates to the department that there is need for additional information and the extension is in the enrollee's interest.

(18) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.

(19) If an MCO denies a request for an expedited resolution of an appeal, it shall:

- (a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period begins on the date the MCO received the original request for appeal;
- (b) Give prompt oral notice of the denial; and
- (c) Follow up with a written notice within two (2) calendar days of the denial.

(20) An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.

(21) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563, 42 C.F.R. 438 Subpart F and 42 C.F.R. 431 Subpart E.

(22) An enrollee shall be able to request a state fair hearing if dissatisfied with an adverse action that has been taken by an MCO:

(a) Within thirty (30) days of receiving notice of an adverse action; or

(b) Within thirty (30) days of the final decision of an MCO to an appeal filed by an enrollee.

(23) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(24) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

(a) Comply with the state fair hearing requirements established by the state and federal Medicaid law; or

(b) Appear in person and present evidence at the state fair hearing.

(25) An MCO shall:

(a) Provide information specified in 42 C.F.R. 438.10(g)(1) about the grievance system to a service provider and a subcontractor at the time they enter into a contract;

(b) Maintain a grievance or an appeal file in a secure and designated area;

(c) Make a grievance or an appeal file accessible to the department or its designee upon request;

(d) Retain a grievance or an appeal file for ten (10) years following a final decision by the MCO, the department, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later;

(e) Have procedures for assuring that a grievance or an appeal file contains:

- 1. Information to identify the grievance or appeal;
- 2. The date a grievance or appeal was received;
- 3. The nature of the grievance or appeal;
- 4. A notice to the enrollee of receipt of the grievance or appeal;
- 5. Correspondence between the MCO and the enrollee;
- 6. The date the grievance or appeal is resolved;
- 7. The decision made by the MCO of the grievance or appeal;
- 8. The notice of a final decision to the enrollee; and
- 9. Information pertaining to the grievance or appeal; and
- (f) Make available to an enrollee documentation regarding a grievance or an appeal.

(26) An MCO shall designate an individual to:

(a) Execute the policies and procedures for resolution of a grievance or appeal;

(b) Review patterns or trends in grievances or appeals; and

(c) Initiate a corrective action, if needed.

Section 6. Member Services. (1) An MCO shall have a member services function that includes a member call center and a behavioral health call center that shall:

(a) Be staffed Monday through Friday from 7:00 a.m. to 7:00 p.m. Eastern Standard Time; and

(b) Meet the current American Accreditation Health Care Commission or Utilization Review Accreditation Committee (URAC)-designed Health Call Center Standard (HCC) for call center abandonment rate, blockage rate and average speed of answer.

(2)(a) An MCO shall provide access to medical advice to an enrollee through a toll-free call-in system, available twenty-four (24) hours a day, seven (7) days a week.

(b) The call-in system shall be staffed by medical professionals to include:

1. Physicians;
2. Physician assistants;
3. Licensed practical nurses; or
4. Registered nurses.

(3) An MCO shall:

(a)1. Provide foreign language interpreter services for an enrollee.

2. Interpreter services shall be available free of charge.

(b) Respond to the special communication needs of the disabled, blind, deaf, or aged.

(c) Facilitate direct access to a specialty physician for an enrollee:

1. With a chronic or complex health condition;
2. Who is aged, blind, deaf, or disabled; or
3. Identified as having a special healthcare need and requires a course of treatment or regular healthcare monitoring;

(d) Arrange for and assist with scheduling an EPSDT service in conformance with federal law governing EPSDT;

(e) Provide an enrollee with information or refer to a support service;

(f) Facilitate direct access to a covered service in accordance with Section 29(4)

(g) Facilitate access to a:

1. Behavioral health service;
2. Pharmaceutical service; or
3. Service provided by a public health department, community mental health center, rural health clinic, federally qualified health center, the Commission for Children with Special Health Care Needs or a charitable care provider;

(h) Assist an enrollee in:

1. Scheduling an appointment with a provider;
2. Obtaining transportation for an emergency or non-emergency service;
3. Completing a health risk assessment; or
4. Accessing an MCO health education program;

(i) Process, record, and track an enrollee grievance and appeal; or

(j) Refer an enrollee to case management or disease management.

Section 7. Enrollee Selection of Primary Care Provider. (1) Except for an enrollee described in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have a primary care provider:

- (a) A dual eligible;
- (b) A child in foster care;
- (c) A child under the age of eighteen (18) years who is disabled; or
- (d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 1:810.

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

- a. Has historically provided services to the enrollee; and
- b. Meets the requirements of subsection (5) of this section.

(b) If no primary care provider meets the requirements of paragraph (a)2, an MCO shall assign the enrollee to a primary care provider who is within:

1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence or place of employment if the enrollee is in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence or place of employment if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) days of a second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee has chosen a primary care provider after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) days of the enrollee's initial enrollment.

(5)(a) An enrollee shall be allowed to select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within their scope of licensure or certification, including:

1. A physician;
2. An advanced practice registered nurse;
3. A physician assistant; or
4. A clinic, including a primary care center, federally qualified health center, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care directly or through linkage with a primary care provider.

(7) Upon enrollment in an MCO, an enrollee shall have the right to change primary care providers:

- (a) Within the first ninety (90) days of assignment;
- (b) Once a year regardless of reason;
- (c) At any time for a reason approved by the MCO;
- (d) If during a temporary loss of eligibility, an enrollee loses the opportunity in paragraph (b) of this subsection;
- (e) If Medicare or Medicaid imposes a sanction on the PCP;
- (f) If the PCP is no longer in the MCO provider network; or
- (g) At any time with cause which shall include and enrollee:
 1. Receiving poor quality of care; or
 3. Lacking access to providers qualified to treat the enrollee's medical condition.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following:

- (a) A change in the enrollee's health status or treatment needs;
- (b) An enrollee's utilization of health services;
- (c) An enrollee's diminished mental capacity; or
- (d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO shall have the authority to approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

- (a) A family planning service in accordance with 42 C.F.R. 431.51;
- (b) An emergency service in accordance with 42 C.F.R. 438.114;
- (c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c);
- (d) An out-of-network service that an MCO is unable to provide

within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4).

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 8. Primary Care Provider Responsibilities. (1) A PCP shall:

(a) Maintain:

1. Continuity of an enrollee's health care;

2. A current medical record for an enrollee in accordance with Section 24 of this administrative regulation; and

3. Formalized relationships with other PCPs to refer enrollees for after hours care, during certain days, for certain services, or other reasons to extend their practice.

(b) Refer an enrollee for specialty care and other medically necessary services, both in and out of network, if the services are not available within the MCO's network;

(c) Discuss advance medical directives with an enrollee;

(d) Provide primary and preventive care, including EPSDT services;

(e) Refer an enrollee for a behavioral health service if clinically indicated; and

(f) Have an after-hours phone arrangement that ensures that a PCP or a designated medical practitioner returns the call within thirty (30) minutes;

(2) An MCO shall monitor a PCP to ensure compliance with the policies in this section.

Section 9. Member Handbook. (1) An MCO shall:

(a) Send a member handbook to an enrollee, by a method that shall not take more than three (3) days to reach the enrollee, within five (5) business days of enrollment;

(b) Review a member handbook at least annually;

(c) Communicate a change to a member handbook to an enrollee in writing; and

(d) Add a revision date to a member handbook after revising.

(2) A member handbook shall:

(a) Be available:

1. In English, Spanish, and any other language spoken by at least five (5) percent of the potential enrollee or enrollee population;

2. In hardcopy; and

3. On the MCO's Web site;

(b) Be written at no higher than a sixth grade reading comprehension level; and

(c) Include at a minimum the following information:

1. The MCO's network of primary care providers, including the names, telephone numbers, and service site addresses of available primary care providers;

2. The procedures for:

a. Selecting a PCP and scheduling an initial health appointment;

b. Obtaining:

(i) Emergency or non emergency care after hours;

(ii) Transportation for emergency or non-emergency care;

(iii) An EPSDT service;

(iv) A covered service from an out-of-network provider; or

(v) A long term care service;

c. Notifying DCBS of a change in family size or address, a birth, or a death of an enrollee;

d.(i) Selecting or requesting to change a PCP;

(ii) A reason a request for a change may be denied by the MCO;

(iii) A reason a provider may request to transfer an enrollee to a different PCP;

e. Filing a grievance or appeal, including the title, address and telephone number of the person responsible for processing and resolving a grievance or appeal;

3. The name of the MCO, address, and telephone number from

which it conducts its business;

4. The MCO's:

a. Business hours; and

b. Member service and toll-free medical call-in telephone numbers;

5. Covered services, an explanation of any service limitation or exclusion from coverage, and a notice stating that the MCO will be liable only for those services authorized by the MCO, except for the services excluded in Section 7(11) of this administrative regulation.

6. Member rights and responsibilities;

7. For a life-threatening situation, instructions to use the emergency medical services available or to activate emergency medical services by dialing 911;

8. Information on:

a. The availability of maternity and family planning services, and for the prevention and treatment of sexually transmitted diseases;

b. Accessing the services referenced in clause a. of this paragraph;

c. Accessing care before a primary care provider is assigned or chosen;

d. The Cabinet for Health and Family Services' independent ombudsman program; and

e. The availability of, and procedures for, obtaining:

(i) A behavioral health or substance abuse service;

(ii) A health education service; and

(iii) Care coordination, case management, and disease management services;

9. Direct access services that may be accessed without a referral; and

10. An enrollee's right to obtain a second opinion and information on obtaining a second opinion; and

(c) Meet the information requirements established in Section 12 of this administrative regulation.

(3) Changes to a member handbook shall be approved by the department prior to the publication of the handbook.

Section 10. Member Education and Outreach. (1) An MCO shall:

(a) Have an enrollee and community education and outreach program throughout the MCO's service area;

(b) Submit an annual outreach plan to the department for approval;

(c) Assess the homeless population within its service area by implementing and maintaining an outreach plan for homeless individuals, including victims of domestic violence; and

(d) Not differentiate between a service provided to an enrollee who is homeless and an enrollee who is not homeless.

(2) An MCO's outreach plan shall include:

(a) Utilizing existing community resources including shelters and clinics; and

(b) Face-to-face encounters.

Section 11. Enrollee Non-Liability for Payment. (1) Except as specified in Section 58 or Section 7(11) of this administrative regulation, an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(2) An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

(3) If an enrollee agrees in advance in writing to pay for a non-Medicaid covered service, the enrollee's MCO shall be authorized to bill the enrollee for the service.

Section 12. Provision of Information Requirements. (1) An MCO shall:

(a) Comply with the requirements established in 42 U.S.C. 1396u-2(a)(5) and 42 C.F.R. 438.10; and

(b) Provide translation services to an enrollee on site or via telephone.

(2) Written material provided by an MCO to an enrollee or potential enrollee shall:

(a) Be written at a sixth grade reading comprehension level;

(b) Be published in at least a twelve (12) point font;

(c) Comply with the requirements established in 42 U.S.C. Chapter 126 and 47 U.S.C. Chapter 5 (the Americans with Disabilities Act);

(d) Be updated as necessary to maintain accuracy; and

(e) Be available in Braille or in an audio format for an individual who is partially blind or blind.

(3) All written material intended for an enrollee, unless unique to an individual enrollee or exempted by the department, shall be submitted to the department for review and approval prior to publication or distribution to the enrollee.

Section 13. Provider Services. (1) An MCO shall have a provider services function responsible for:

(a) Enrolling, credentialing, recredentialing, and evaluating a provider;

(b) Assisting a provider with an inquiry regarding enrollee status, prior authorization, referral, claim submission, or payment;

(c) Informing a provider of their rights and responsibilities;

(d) Handling, recording, and tracking a provider grievance and appeal;

(e) Developing, distributing, and maintaining a provider manual;

(f) Provider orientation and training, including:

1. Medicaid covered services;

2. EPSDT coverage;

3. Medicaid policies and procedures;

4. MCO policies and procedures; and

5. Fraud, waste, and abuse;

(g) Assisting in coordinating care for a child or adult with a complex or chronic condition;

(h) Assisting a provider with enrolling in the Vaccines for Children Program in accordance with 907 KAR 1:680; and

(i) Providing technical support to a provider regarding the provision of a service.

(2) An MCO's provider services staff shall:

(a) Be available Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Standard Time; and

(b) Operate a provider call center.

Section 14. Provider Network. (1) An MCO shall:

(a) Enroll providers of sufficient types, numbers, and specialties in its network to satisfy the:

1. Access and capacity requirements established in Section 15 of this administrative regulation; and

2. Quality requirements established in Section 48 of this administrative regulation;

(b) Attempt to enroll the following providers in its network:

1. A teaching hospital;

2. A rural health clinic;

3. The Kentucky Commission for Children with Special Health Care Needs;

4. A local health department; and

5. A community mental health center;

(c) Demonstrate to the department the extent to which it has enrolled providers in its network who have traditionally provided services to Medicaid recipients;

(d) Have at least one (1) FQHC in a region where the MCO operates in accordance with Section 28, if there is an FQHC that is appropriately licensed to provide services in the region; and

(e) Exclude, terminate, or suspend from its network a provider or subcontractor who engages in an activity that results in suspension, termination, or exclusion from the Medicare or a Medicaid program.

(2) The length of an exclusion, termination, or suspension referenced in subsection (1)(e) of this subsection shall equal the length of the exclusion, termination, or suspension imposed by the Medicare or a Medicaid program.

(3) If an MCO is unable to enroll a provider specified in subsection (1)(b) or (1)(c) of this section, the MCO shall submit to the department for approval, documentation which supports the MCO's conclusion that adequate services and service sites as required in Section 15 of this administrative regulation shall be provided without enrolling the specified provider.

(4) If an MCO determines that its provider network is inadequate

to comply with the access standards established in Section 15 of this administrative regulation, the MCO shall:

(a) Notify the department; and

(b) Submit a corrective action plan to the department.

(5) A corrective action plan referenced in subsection (4)(b) of this section shall:

(a) Describe the deficiency in detail; and

(b) Identify a specific action to be taken by the MCO to correct the deficiency, including a time frame.

Section 15. Provider Access Requirements. (1) The access standards requirements established in 42 C.F.R. 438.206 through 210 shall apply to an MCO.

(2) An MCO shall make available and accessible to an enrollee:

(a) Facilities, service locations, and personnel sufficient to provide covered services consistent with the requirements specified in this section;

(b) Emergency medical services twenty-four (24) hours a day, seven (7) days a week; and

(c) Urgent care services within 48 hours of request.

(3)(a) An MCO's primary care provider delivery site shall be no more than:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence or place of employment in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from an enrollee's residence or place of employment in a non-urban area.

(b) An MCO's primary care provider shall not have an enrollee to primary care provider ratio greater than 1,500:1.

(c) An appointment wait time at an MCO's primary care delivery site shall not exceed:

1. Thirty (30) days from the date of an enrollee's request for a routine or preventive service; or

2. Forty-eight (48) hours from an enrollee's request for urgent care.

(b)(a) An appointment wait time for a specialist, except for a specialist providing a behavioral health service, shall not exceed thirty (30) days from the referral for routine care or forty-eight (48) hours from the referral for urgent care.

(b)1. A behavioral health service requiring crisis stabilization shall be provided within twenty-four (24) hours of the referral.

2. Behavioral health urgent care shall be provided within forty-eight (48) hours of the referral.

3. A behavioral health service appointment following a discharge from an acute psychiatric hospital shall occur within fourteen (14) days of discharge.

4. A behavioral health service appointment not included in subparagraph 1, 2, or 3 of this paragraph shall occur within sixty (60) days of the referral.

(5) An MCO shall have:

1. Specialists available for the subpopulations designated in Section 30 of this administrative regulation; and

2. Sufficient pediatric specialists to meet the needs of enrollees who are less than twenty-one (21) years of age.

(6) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition, whether or not the facility is in the MCO network.

(7)(a) Except as provided in paragraph (b) of this subsection, an enrollee's transport time to a hospital shall not exceed thirty (30) minutes from an enrollee's residence.

(b) Transport time to a hospital shall not exceed sixty (60) minutes from an enrollee's residence:

1. In a rural area; or

2. For a behavioral or physical rehabilitation service.

(8)(a) Transport time for a dental service shall not exceed one (1) hour from an enrollee's residence.

(b) A dental appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

2. Forty-eight (48) hours for urgent care.

(9)(a) Transport time to a general vision, laboratory, or radiological service shall not exceed one (1) hour from an enrollee's residence.

(b) A general vision, laboratory, or radiological appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or
2. Forty-eight (48) hours for urgent care.
- (10)(a) Transport time to a pharmacy service shall not exceed one (1) hour from an enrollee's residence.
- (b) A pharmacy delivery site shall not be further than fifty (50) miles from an enrollee's residence.

Section 16. Provider Manual. (1) An MCO shall provide a provider manual to a provider within five (5) working days of enrollment with the MCO.

(2) Prior to distributing a provider manual or update to a provider manual, an MCO shall procure the department's approval of the provider manual or provider manual update

(3) A provider manual shall be available in hard copy and on the MCO's Web site.

Section 17. Provider Orientation and Education. An MCO shall:

(1) Conduct an initial orientation for a provider within thirty (30) days of enrollment with the MCO to include:

- (a) Medicaid coverage policies and procedures;
- (b) Reporting fraud and abuse;
- (c) Medicaid eligibility groups;
- (d) The standards for preventive health services;
- (e) The special needs of enrollees;
- (f) Advance medical directives;
- (g) EPSDT services;
- (h) Claims submission;
- (i) Care management or disease management programs available to enrollees;
- (j) Cultural sensitivity;
- (k) The needs of enrollees with mental, developmental, or physical disabilities;
- (l) The reporting of communicable diseases;
- (m) The MCO's QAPI program as referenced in Section 48;
- (n) Medical records;
- (o) The external quality review organization; and
- (p) The rights and responsibilities of enrollees and providers; and

- (2) Ensure that a provider:
 - (a) Is informed of an update on a federal, state, or contractual requirement;
 - (b) Receives education on a finding from its QAPI program when deemed necessary by the MCO or department; and
 - (c) Makes available to the department training attendance rosters that shall be dated and signed by the attendees.

Section 18. Provider Credentialing and Recredentialing. (1) An MCO shall:

(a) Have policies and procedures that comply with 907 KAR 1:672, KRS 205.560, and 42 C.F.R. 455 subpart E regarding the credentialing and recredentialing of a provider;

(b) Have a process for verifying a provider's credentials and malpractice insurance that shall include:

1. Written policies and procedures for credentialing and recredentialing of a provider;
2. A governing body, or a group or individual to whom the governing body has formally delegated the credentialing function; and
3. A review of the credentialing policies and procedures by a governing body;
- (c) Have a credentialing committee that makes recommendations regarding credentialing;
- (d) If a provider requires a review by the credentialing committee, notify the department of the facts and outcomes of the review;
- (e) Have written policies and procedures for:
 1. Terminating and suspending a provider; and
 2. Reporting a quality deficiency that results in a suspension or termination of a provider;
- (f) Document its monitoring of a provider;
- (g) Verify a provider's qualifications through a primary source that includes:
 1. A current valid license or certificate to practice in the commonwealth of Kentucky;
 2. A Drug Enforcement Administration certificate and number, if applicable;

3. If a provider is not board certified, graduation from a medical school and completion of a residency program;

4. Completion of an accredited nursing, dental, physician assistant, or vision program, if applicable;

5. If a provider states on an application that the provider is board certified in a specialty, a professional board certification;

6. A previous five (5) year work history;

7. A professional liability claims history;

8. If a provider requires access to a hospital to practice, proof that the provider

has clinical privileges and is in good standing at a hospital designated by the provider as the primary admitting hospital;

9. Malpractice insurance;

10. Documentation of a:

a. Revocation, suspension, or probation of a state license or Drug Enforcement Agency certificate and number;

b. Curtailment or suspension of a medical staff privilege;

c. Sanction or penalty imposed by the United States Department of Health and Human Services or a state Medicaid agency; and

d. Censure by a state or county professional association; or

11. The most recent provider information available from the National Practitioner Data Bank;

(h) Obtain access to the National Practitioner Data Bank as part of its credentialing process;

(i) Have:

1. A process to recredential a provider at least once every three (3) years that shall be in accordance with subsection (3) of this section; and

2. Procedures for monitoring a provider sanction, a complaint, or a quality issue between a recredentialing cycle; and

(j) Have NCQA certification for credentialing by April 1, 2012.

(2) If an MCO subcontracts a credentialing and re-credentialing function, the MCO and the subcontractor shall have written policies and procedures for credentialing and recredentialing.

(3) A provider shall complete a credentialing application that includes a statement by the provider regarding:

(a) The provider's ability to perform an essential function of a position, with or without accommodation;

(b) The provider's lack of current illegal drug use;

(c) The provider's history of a:

1. Loss of license or a felony conviction;

2. Loss or limitation of a privilege; or

3. Disciplinary action;

(d) A sanction, suspension, or termination by the United States Department of Health and Human Services or a state Medicaid agency;

(e) Clinical privileges and standing at a hospital designated as the primary admitting hospital of the provider;

(f) Malpractice insurance maintained by the provider; and

(g) The correctness and completeness of the application.

(4) The department shall be responsible for credentialing and recredentialing a:

(a) Hospital-based provider; and

(b) Provider enrolled with an MCO for a six (6) month period that begins on November 1, 2011 and ends on April 30, 2012.

Section 19. MCO Provider Enrollment. (1) A provider enrolled with an MCO shall:

(a) Be credentialed by the MCO in accordance with the standards established in Section 18 of this administrative regulation; and

(b) Be eligible to enroll with the Kentucky Medicaid Program in accordance with 907 KAR 1:672.

(2) An MCO shall:

(a) Not enroll a provider in its network if:

1. The provider has an active sanction imposed by the Centers for Medicare and Medicaid Services or a state Medicaid agency;

2. A required provider license and a certification are not current;

3. A provider owes money to the Kentucky Medicaid program;

4. The Kentucky Office of the Attorney General has an active fraud investigation of the provider; or

5. The provider is not credentialed;

(b) Have and maintain documentation regarding a provider's

qualifications; and

(c) Make the documentation referenced in paragraph (b) of this subsection available for review by the department.

(3)(a) A provider shall not be required to participate in Kentucky Medicaid fee-for-service to enroll with an MCO.

(b) If a provider is not a participant in Kentucky Medicaid fee-for-service, the provider shall obtain a Medicaid provider number from the department.

Section 20. Provider Discrimination. An MCO shall:

(1) Comply with the antidiscrimination requirements established in:

(a) 42 U.S.C. 1396u-2(b)(7);

(b) 42 C.F.R. 438.12; and

(c) KRS 304.17A-270; and

(2) Provide written notice to a provider denied participation in the MCO's network stating the reason for the denial.

Section 21. Release for Ethical Reasons. An MCO shall:

(1) Not:

(a) Require a provider to perform a treatment or procedure that is contrary to the provider's conscience, religious beliefs, or ethical principles in accordance with 42 C.F.R. 438.102; or

(b) Prohibit or restrict a provider from advising an enrollee about health status, medical care or a treatment:

1. Whether or not coverage is provided by the MCO; and

2. If the provider is acting within the lawful scope of practice; and

(2) Have a referral process in place for a situation where a provider declines to perform a service because of an ethical reason.

Section 22. Provider Grievances and Appeals. (1) An MCO shall have written policies and procedures for the filing of a provider grievance or appeal.

(2) A provider shall have the right to file a grievance or an appeal with an MCO.

(3)(a) A provider grievance or appeal shall be resolved within thirty (30) calendar days.

(b) If a grievance or appeal is not resolved within thirty (30) days, an MCO shall request a fourteen (14) day extension from the provider.

(c) If a provider requests an extension, the MCO shall approve the extension.

Section 23. Cost Reporting Information. The department shall provide to the MCO the calculation of Medicaid allowable costs as used in the Medicaid program.

Section 24. Medical Records. (1) An MCO shall:

(a) Require a provider to maintain an enrollee medical record on paper or in an electronic format; and

(b) Have a process to systematically review provider medical records to ensure compliance with the medical records standards established in this section.

(2) An enrollee medical record shall:

(a) Be legible, current, detailed, organized, and signed by the service provider;

(b) 1. Be kept for at least five (5) years from the date of service unless federal law or regulation requires a longer retention period; and

2. If federal law or regulation requires a retention period longer than five (5) years, an enrollee medical record shall be kept for at least as long as the federally-required retention period;

(c) Include the following minimal detail for an individual clinical encounter:

1. The history and physical examination for the presenting complaint;

2. A psychological or social factor affecting the patient's physical or behavioral health;

3. An unresolved problem, referral, or result from a diagnostic test; and

4. The plan of treatment including:

a. Medication history, medications prescribed, including the

strength, amount, and directions for use and refills;

b. Therapy or other prescribed regimen; and

c. Follow-up plans, including consultation, referrals, and return appointment.

(3) A medical chart organization and documentation shall, at a minimum, contain the following:

(a) Enrollee identification information on each page;

(b) Enrollee date of birth, age, gender, marital status, race, or ethnicity, mailing address, home and work addresses, and telephone numbers (if applicable), employer (if applicable), school (if applicable), name and telephone number of an emergency contact, consent form, language spoken and guardianship information (if applicable);

(c) Date of data entry and of encounter;

(d) Provider's name;

(e) Any known allergies or adverse reactions of the enrollee;

(f) Enrollee's past medical history;

(g) Identification of any current problem;

(h) A consultation, laboratory, or radiology report filed in the medical record shall contain the ordering provider's initials or other documentation indicating review;

(i) Documentation of immunizations;

(j) Identification and history of nicotine, alcohol use, or substance abuse;

(k) Documentation of notification of reportable diseases and conditions to the local health department serving the jurisdiction in which the enrollee resides or to the Department for Public Health pursuant to 902 KAR 2:020;

(l) Follow-up visits provided secondary to reports of emergency room care;

(m) Hospital discharge summaries;

(n) Advance medical directives for adults; and

(o) All written denials of service and the reason for the denial.

Section 25. Confidentiality of Medical Information. (1) An MCO shall:

(a) Maintain confidentiality of all enrollee eligibility information and medical records;

(b) Prevent unauthorized disclosure of the information referenced in subsection (1) of this section in accordance with KRS 194A.060, KRS 214.185, KRS 434.840 to 434.860, and 42 C.F.R. 431, Subpart F;

(c) Have written policies and procedures for maintaining the confidentiality of enrollee records;

(d) Comply with 42 U.S.C. 1320d (Health Insurance Portability and Accountability Act) and 45 C.F.R. Parts 160 and 164;

(e) An MCO on behalf of its employees and agents shall sign a confidentiality agreement;

(f) Limit access to medical information to a person or agency which requires the information in order to perform a duty related to the department's administration of the Medicaid program, including the department, the United States Department of Health and Human Services, the United States Attorney General, the CHFS OIG, the Kentucky Attorney General, or other agency required by the department; and

(g) Submit a request for disclosure of information to the department within twenty-four (24) hours.

(2) No information referenced in subsection (1)(g) of this section shall be disclosed by an MCO pursuant to the request without prior written authorization from the department.

Section 26. Americans with Disabilities Act and Cabinet Ombudsman. (1) An MCO shall:

(a) Require by contract with its network providers and subcontractors that a service location meets:

1. The requirements established in 42 U.S.C. Chapter 126 and 47 U.S.C. Chapter 5 (the Americans with Disabilities Act); and

2. All local requirements which apply to health facilities pertaining to adequate space, supplies, sanitation, and fire and safety procedures;

(b) Fully cooperate with the Cabinet for Health and Family Services independent ombudsman; and

(c) Provide immediate access, to the Cabinet for Health and Family Services independent ombudsman, to an enrollee's records

if the enrollee has given consent.

(2) An MCO's member handbook shall contain information regarding the Cabinet for Health and Family Services independent ombudsman program.

Section 27. Marketing. (1) An MCO shall:

(a) Comply with the requirements in 42 C.F.R. 438.104 regarding marketing activities;

(b) Have a system of control over the content, form, and method of dissemination of its marketing and information materials;

(c) Submit a marketing plan and marketing materials to the department for written approval prior to implementation or distribution.

(d) If conducting mass media marketing, direct the marketing activities to enrollees in the entire service area pursuant to the marketing plan; and

(e) Not:

1. Conduct face-to-face marketing;

2. Use fraudulent, misleading, or misrepresentative information in its marketing materials;

3. Offer material or financial gain to a:

a. Potential enrollee as an inducement to select a particular provider or use a product; or

b. Person for the purpose of soliciting, referring, or otherwise facilitating the enrollment of an enrollee;

4. Conduct:

a. Direct telephone marketing to enrollees and potential enrollees who do not reside in the MCO service area; or

b. Direct or indirect door-to-door, telephone, or other cold-call marketing activity; or

5. Include in its marketing materials an assertion or statement that CMS, the federal government, the commonwealth, or other entity endorses the MCO.

(2) An MCO's marketing material shall meet the information requirements established in Section 12 of this administrative regulation.

Section 28. MCO Service Areas. (1)(a) An MCO's service areas shall include regions one (1), two (2), four (4), five (5), six (6), seven (7), and eight (8).

(b) An MCO's service areas shall not include region three (3).

(2) A recipient who is eligible for enrollment with a managed care organization and who resides in region three (3) shall receive services in accordance with 907 KAR 1:705.

(3) Region one (1) shall include the following counties:

- (a) Ballard;
- (b) Caldwell;
- (c) Calloway;
- (d) Carlisle;
- (e) Crittenden;
- (f) Fulton;
- (g) Graves;
- (h) Hickman;
- (i) Livingston;
- (j). Lyon;
- (k) Marshall; and
- (l) McCracken;

(4) Region two (2) shall include the following counties:

- (a) Christian;
- (b) Daviess;
- (c) Hancock;
- (d) Henderson;
- (e) Hopkins;
- (f) McLean;
- (g) Muhlenberg;
- (h) Ohio;
- (i) Trigg;
- (j). Todd;
- (k) Union; and
- (l) Webster;

(5) Region three (3) shall include the following counties:

- (a) Breckenridge;
- (b) Bullitt;
- (c) Carroll;

(d) Grayson;

(e) Hardin;

(f) Henry;

(g) Jefferson;

(h) Larue;

(i) Marion;

(j) Meade;

(k) Nelson;

(l) Oldham;

(m) Shelby;

(n) Spencer;

(o) Trimble; and

(p) Washington;

(6) Region four (4) shall include the following counties:

(a) Adair;

(b) Allen;

(c) Barren;

(d) Butler;

(e) Casey;

(f) Clinton;

(g) Cumberland;

(h) Edmonson;

(i) Green;

(j) Hart;

(k) Logan;

(l) McCreary;

(m) Metcalfe;

(n) Monroe;

(o) Pulaski;

(p) Russell;

(q) Simpson;

(r) Taylor;

(s) Warren; and

(t) Wayne;

(7) Region five (5) shall include the following counties:

(a) Anderson;

(b) Bourbon;

(c) Boyle;

(d) Clark;

(e) Estill;

(f) Fayette;

(g) Franklin;

(h) Garrard;

(i) Harrison;

(j) Jackson;

(k) Jessamine;

(l) Lincoln;

(m) Madison;

(n) Mercer;

(o) Montgomery;

(p) Nicholas;

(q) Owen;

(r) Powell;

(s) Rockcastle;

(t) Scott; and

(u) Woodford;

(8) Region six (6) shall include the following counties:

(a) Boone;

(b) Campbell;

(c) Gallatin;

(d) Grant;

(e) Kenton; and

(f) Pendleton;

(9) Region seven (7) shall include the following counties:

(a) Bath;

(b) Boyd;

(c) Bracken;

(d) Carter;

(e) Elliott;

(f) Fleming;

(g) Greenup;

(h) Lawrence;

(i) Lewis;

(j) Mason;

- (k) Menifee;
- (l) Morgan;
- (m) Rowan;
- (n) Robertson;
- (10) Region eight (8) shall include the following counties:
 - (a) Bell;
 - (b) Breathitt;
 - (c) Clay;
 - (d) Floyd;
 - (e) Harlan;
 - (f) Johnson;
 - (g) Knott;
 - (h) Knox;
 - (i) Laurel;
 - (j) Lee;
 - (k) Leslie;
 - (l) Letcher;
 - (m) Magoffin;
 - (n) Martin;
 - (o) Owsley;
 - (p) Perry;
 - (q) Pike;
 - (r) Wolfe; and
 - (s) Whitley.

Section 29. Covered Services. (1) Except as established in subsection (2) of this section, an MCO shall be responsible for the provision and costs of a covered health service:

(a) Established in Title 907 of the Kentucky Administrative Regulations;

(b) In the amount, duration, and scope that the services are covered for recipients pursuant to the department's administrative regulations located in Title 907 of the Kentucky Administrative Regulations; and

(c) Beginning on the date of enrollment of a recipient into the MCO.

(2) Other than a nursing facility cost referenced in subsection (3)(g) of this section, an MCO shall be responsible for the cost of a non-nursing facility covered service provided to an enrollee during the first thirty (30) days of a nursing facility admission in accordance with this administrative regulation.

(3) An MCO shall not be responsible for the provision or costs of the following:

(a) A service provided to a recipient in an intermediate care facility for individuals with mental retardation or a developmental disability;

(b) A service provided to a recipient in a 1915(c) home and community based waiver program;

(c) A hospice service provided to a recipient in an institution;

(d) A nonemergency transportation service provided in accordance with 907 KAR 3:066;

(e) Except as established in Section 35 of this administration regulation, a school-based health service;

(f) A service not covered by the Kentucky Medicaid program;

(g) A health access nurturing developing service pursuant to 907 KAR 3:140;

(h) An early intervention program service pursuant to 907 KAR 1:720; or

(i) A nursing facility service for an enrollee during the first thirty (30) days of a nursing facility admission.

(4) The following covered services provided by an MCO shall be accessible to an enrollee without a referral from the enrollee's primary care provider:

(a) A primary care vision service;

(b) A primary dental or oral surgery service;

(c) An evaluation by an orthodontist or a prosthodontist;

(d) A service provided by a women's health specialist;

(e) A family planning service;

(f) An emergency service;

(g) Maternity care for an enrollee under age eighteen (18);

(h) An immunization for an enrollee under twenty-one (21);

(i) A screening, evaluation, or treatment service for a sexually transmitted disease or tuberculosis;

(j) Testing for HIV, HIV-related condition, or other communica-

ble disease; and

(k) A chiropractic service.

(5) An MCO shall:

(a) Not require the use of a network provider for a family planning service;

(b) In accordance with 42 C.F.R. 431.51(b), reimburse for a family planning service provided within or outside of the MCO's provider network;

(c) Cover an emergency service:

1. In accordance with 42 U.S.C. 1396u-2(b)(2)(A)(i);

2. Provided within or outside of the MCO's provider network; or

3. Out-of-state in accordance with 42 C.F.R. 431.52;

(d) Comply with 42 U.S.C. 1396u-2(b)(A)(ii); and

(e) Be responsible for the provision and costs of a covered service as described in this section beginning on or after the beginning date of enrollment of a recipient with an MCO as described in Section 2 of this administrative regulation.

(6)(a) If an enrollee is receiving a medically necessary covered service the day before enrollment with an MCO, the MCO shall be responsible for the costs of continuation of the medically necessary covered service without prior approval and without regard to whether services are provided within or outside the MCO's network until the MCO can reasonably transfer the enrollee to a network provider.

(b) An MCO shall comply with paragraph (a) of this subsection without impeding service delivery or jeopardizing the enrollee's health.

Section 30. Enrollees with Special Health Care Needs. (1) In accordance with

42 C.F.R. 438.208:

(a) The following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or adoption assistance;

2. A homeless individual;

3. An individual with a chronic physical or behavioral illness;

4. A blind or disabled child under the age of nineteen (19) years;

5. An individual who is eligible for SSI benefits; or

6. An adult who is a ward of the commonwealth in accordance with 910 KAR Chapter 2; and

(b) An MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;

2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;

3. Include the use of appropriate health care professionals to perform an assessment; and

4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(2) A treatment plan referenced in subsection (1)(b)4 of this section shall be developed by an enrollee's primary care provider with participation from the enrollee or the enrollee's legal guardian as referenced in Section 43 of this administrative regulation.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials referenced in paragraph (a) of this subsection to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need;

(c) Distribute to an enrollee with a special health care need or a caregiver, parent, or legal guardian of an enrollee with a special health care need, information and materials specific to the need of the enrollee; and

(d) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information referenced in subsection (3)(c) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

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(5)(a) An enrollee who is a child in foster care or receiving adoption assistance shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

(b) The service plan referenced in paragraph (a) of this subsection shall be used by DCBS and the MCO to determine the enrollee's medical needs and identify the need for case management.

(c) At least once a month, the MCO shall meet with DCBS to discuss the health care needs of the child as identified in the service plan.

(d) If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with MCO to develop a plan of care.

(e) The MCO shall consult with DCBS prior to developing or modifying a plan of care.

(6)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

(b) If the service plan referenced in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a plan of care.

Section 31. Second Opinion. An enrollee shall have the right to a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 32. Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services. (1) An MCO shall provide an enrollee under the age of twenty-one (21) years EPSDT services in compliance with:

(a) 907 KAR 11:034;

(b) 42 U.S.C. 1396d; and

(c) The Early and Periodic Screening, Diagnosis and Treatment Program Periodicity Schedule.

(2) A provider of an EPSDT service shall meet the requirements established in 907 KAR 11:034.

Section 33. Emergency Care, Urgent Care, and Post-Stabilization Care. (1) An MCO shall provide to an enrollee:

(a) Emergency care twenty-four (24) hours a day, seven (7) days a week; and

(b) Urgent care within forty-eight (48) hours.

(2) Post-stabilization services shall be provided and reimbursed in accordance with 42 C.F.R. 422.113(c) and 438.114(e).

Section 34. Maternity Care. An MCO shall:

(1) Have procedures to assure:

(a) Prompt initiation of prenatal care; or

(b) Continuation of prenatal care without interruption for a woman who is pregnant at the time of enrollment;

(2) Provide maternity care that includes:

(a) Prenatal;

(b) Delivery;

(c) Postpartum care; and

(d) Care for a condition that complicates a pregnancy; and

(3) Perform all the newborn screenings referenced in 902 KAR 4:030.

Section 35. Pediatric Interface. (1) An MCO shall:

(a) Have procedures to coordinate care for a child receiving a school-based health service or an early intervention service; and

(b) Monitor the continuity and coordination of care for the child receiving a service referenced in paragraph (a) of this subsection as part of its quality assessment and performance improvement (QAPI) program referenced in Section 48.

(2) Except when a child's course of treatment is interrupted by a school break, after-school hours, or summer break, an MCO shall not be responsible for a service referenced in subsection (1)(a) of this section.

(3) A school-based health service provided by a school district

shall not be covered by an MCO.

(4) A school-based health service provided by a local health department shall be covered by an MCO.

Section 36. Pediatric Sexual Abuse Examination. (1) An MCO shall enroll a provider in its network that has the capacity to perform a forensic pediatric sexual abuse examination.

(2) A forensic pediatric sexual abuse examination shall be conducted for an enrollee at the request of the DCBS.

Section 37. Lock-in Program. (1) An MCO shall have a program to control utilization of:

(a) Drugs and other pharmacy benefits; and

(b) Non-emergency care provided in an emergency setting.

(2) The program referenced in subsection (1) of this subsection shall be approved by the department.

Section 38. Pharmacy Benefit Program. (1) An MCO shall:

(a) Have a pharmacy benefit program that shall have:

1. A point-of-sale claims processing service;

2. Prospective drug utilization review;

3. An accounts receivable process;

4. Retrospective utilization review services;

5. Formulary and non-formulary drugs;

6. Prior authorization process for drugs;

7. Pharmacy provider relations;

8. A toll-free call center that shall respond to a pharmacy or a physician prescriber twenty-four (24) hours a day, seven (7) days a week; and

9. A seamless interface with the department's management information system;

(b) Maintain a preferred drug list (PDL);

(c) Provide the following to an enrollee or a provider:

1. PDL information; and

2. Pharmacy cost sharing information; and

(d) Have a Pharmacy and Therapeutics Committee (P&T Committee).

(2)(a) The department shall comply with the drug rebate collection requirement established in 42 U.S.C. 1396b(m)(2)(A)(xiii).

(b) An MCO shall:

1. Cooperate with the department in complying with 42 U.S.C. 1396b(m)(2)(A)(xiii);

2. Assist the department in resolving a drug rebate dispute with a manufacturer; and

3. Be responsible for drug rebate administration in a non-pharmacy setting.

(3) An MCO's P&T committee shall meet and make recommendations to the MCO for changes to the drug formulary.

(4) If a prescription for an enrollee is for a non preferred drug and the pharmacist cannot reach the enrollee's primary care provider or the MCO for approval and the pharmacist determines it necessary to provide the prescribed drug, the pharmacist shall:

(a) Provide a seventy-two (72) hour supply of the prescribed drug; or

(b) Provide less than a seventy-two (72) hour supply of the prescribed drug if request is for less than a seventy-two (72) hour supply.

(5) Cost sharing imposed by an MCO shall not exceed the cost sharing limits established in 907 KAR 1:604.

Section 39. MCO Interface with State Mental Health Agency. An MCO shall:

(1) Meet with the department monthly to discuss:

(a) Serious mental illness and serious emotional disturbance operating definitions;

(b) Priority populations;

(c) Targeted case management and peer support provider certification training and process;

(d) IMPACT Plus program operations;

(e) Satisfaction survey requirements;

(f) Priority training topics;

(g) Behavioral health services hotline; or

(h) Behavioral health crisis services;

(2) Coordinate:

- (a) An IMPACT Plus covered service provided to an enrollee in accordance with 907 KAR 3:030;
- (b) With the department:
 - 1. An enrollee education process for:
 - a. Individuals with a serious mental illness; and
 - b. Children or youth with a serious emotional disturbance; and
 - 2. On establishing a collaborative agreement with a:
 - a. State-operated or stated-contracted psychiatric hospital; and
 - b. Facility that provides a service to an individual with a co-occurring behavioral health and developmental and intellectual disabilities; and
- (c) With the department and community mental health centers a process for integrating a behavioral health service hotline; and
- (3) Provide the department with proposed materials and protocols for the enrollee education referenced in subsection 2(b) of this section.

Section 40. Behavioral Health Services. (1) An MCO shall:

- (a) Provide a medically necessary behavioral health service to an enrollee in accordance with the access standards described in Section 15 of this administrative regulation;
- (b) Use the DSM-IV multi-axial classification system to assess an enrollee for a behavioral service;
- (c) Have an emergency or crisis behavioral health toll-free hotline staffed by trained personnel twenty-four (24) hours a day, seven (7) days a week; and
- (d) Not:
 - 1. Operate one (1) hotline to handle an emergency or crisis call and a routine enrollee call; or
 - 2. Impose a maximum call duration limit.
- (2) Staff of a hotline referenced in subsection (1)(c) of this section shall:
 - (a) Communicate in a culturally competent and linguistically accessible manner to an enrollee; and
 - (b) Include or have access to a qualified behavioral health professional to assess and triage a behavioral health emergency.
- (3) A face-to-face emergency service shall be available:
 - (a) Twenty-four (24) hours a day; and
 - (b) Seven (7) days a week.

Section 41. Coordination Between a Behavioral Health Provider and a Primary Care Provider. (1) An MCO shall:

- (a) Require a PCP to have a screening and evaluation procedure for the detection and treatment of, or referral for, a known or suspected behavioral health problem or disorder.
- (b) Provide training to a PCP in its network on:
 - 1. Screening and evaluate a behavioral health disorder;
 - 2. The MCO's referral process for a behavioral health service;
 - 3. Coordination requirements for a behavioral health service; and
 - 4. Quality of care standards;
- (c) Have policies and procedures that shall be approved by the department regarding clinical coordination between a behavioral health service provider and a PCP;
- (d) Establish guidelines and procedures to ensure accessibility, availability, referral, and triage to physical and behavioral health care;
- (e) Facilitate the exchange of information among providers to reduce inappropriate or excessive use of psychopharmacological medications and adverse drug reactions;
- (f) Identify a method to evaluate continuity and coordination of care; and
- (g) Include the monitoring and evaluation of the MCO's compliance with the requirements established in paragraphs (a), (b), (c), and (d) of this subsection in the MCO's quality improvement plan.
- (2) With consent from an enrollee or the enrollee's legal guardian, an MCO shall require a behavioral health service provider to:
 - (a) Refer an enrollee with a known or suspected and untreated physical health problem or disorder to their PCP for examination and treatment; and
 - (b) Send an initial and quarterly summary report of an enrollee's behavioral health status to the enrollee's PCP.

Section 42. Court-Ordered Psychiatric Services. (1) An MCO

shall:

- (a) Provide an inpatient psychiatric service to an enrollee under the age of twenty-one (21) and over the age of sixty-five (65), up to the annual limit, who has been ordered to receive the service by a court of competent jurisdiction under the provisions of KRS Chapter 202A and 645;
- (b) Not deny, reduce, or negate the medical necessity of an inpatient psychiatric service provided pursuant to a court-ordered commitment for an enrollee under the age of twenty-one (21) or over the age of sixty-five (65);
- (c) Coordinate with a provider of a behavioral health service the treatment objectives and projected length of stay for an enrollee committed by a court of law to a state psychiatric hospital; and
- (d) Enter into a collaborative agreement with the state-operated or state-contracted psychiatric hospital assigned to the enrollee's region in accordance with 908 KAR 3:040 and in accordance with the *Olmstead* decision.
- (2) An MCO shall present a modification or termination of a service referenced in subsection (1)(b) of this section to the court with jurisdiction over the matter for determination.
- (3)(a) An MCO behavioral health service provider shall:
 - 1. Participate in a quarterly continuity of care meeting with a state-operated or state-contracted psychiatric hospital;
 - 2. Assign a case manager prior to or on the date of discharge of an enrollee from a facility referenced in subsection (3)(a)1 of this section; and
 - 3. Provide case management services to an enrollee with a severe mental illness and co-occurring developmental disability who is discharged from a:
 - a. Facility referenced in subsection (3)(a)1 of this section; or
 - b. State-operated nursing facility for individuals with severe mental illness.
- (b) A case manager and a behavioral health service provider shall participate in discharge planning to ensure compliance with the *Olmstead* decision.

Section 43. Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order shall be authorized to act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

- (a) Selecting a primary care provider;
- (b) Filing a grievance or appeal; or
- (c) Taking an action on behalf of a child regarding an interaction with an MCO.
- (2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 to 387.800 shall be allowed to act on behalf of an enrollee who is a ward of the commonwealth.
- (b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 shall be allowed to act on behalf of an enrollee, potential enrollee, or former enrollee.
- (c) An enrollee shall have the right to:
 - 1. Represent the enrollee; or
 - 2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 44. Utilization Management or UM. (1) An MCO shall:

- (a) Have a utilization management program that:
 - 1. Meets the requirements established in 42 C.F.R. 456, 42 C.F.R. 431, 42 C.F.R. 438, and the private review agent requirements of KRS 304.17A, as applicable; and
 - 2. Shall:
 - a. Identify, define, and specify the amount, duration, and scope of each service that the MCO is required to offer;
 - b. Review, monitor, and evaluate the appropriateness and medical necessity of care and services;
 - c. Identify and describe the UM mechanisms used to:
 - (i) Detect the under or over utilization of services; and
 - (ii) Act after identifying under utilization or over utilization of services;
 - d. Have a written UM program description; and
 - e. Be evaluated annually by the:

- (i) MCO, including an evaluation of clinical and service outcomes; and
- (ii) Department.
- (b) Adopt nationally-recognized standards of care and written criteria that shall be:
 1. Based upon sound clinical evidence, if available, for making utilization decisions; and
 2. Approved by the department;
- (c) Include physicians and other health care professionals in the MCO network in reviewing and adopting medical necessity criteria;
- (d) Have:
 1. A process to review, evaluate, and ensure the consistency with which physicians and other health care professionals involved in UM apply review criteria for authorization decisions;
 2. A medical director who:
 - a. Is a licensed physician and responsible for treatment policies, protocols, and decisions; and
 - b. Supervises the UM program; and
 3. Written policies and procedures that explain how prior authorization data will be incorporated into the MCO's Quality Improvement Plan;
- (e) Submit a request for a change in review criteria for authorization decisions to the department for approval prior to implementation;
- (f) Administer or use a CAHPS survey to evaluate and report enrollee and provider satisfaction with the quality of, and access to, care and services in accordance with Section 55 of this administrative regulation;
- (g) Provide written confirmation of an approval of a request for a service within two (2) business days of providing notification of a decision if:
 1. The initial decision was not in writing; and
 2. Requested by an enrollee or provider;
- (h) If the MCO uses a subcontractor to perform UM, require the subcontractor to have written policies, procedures, and a process to review, evaluate, and ensure consistency with which physicians and other health care professionals involved in UM apply review criteria for authorization decisions; and
- (i) Not provide a financial or other type of incentive to an individual or entity that conducts UM activities to deny, limit, or discontinue a medically necessary service to an enrollee pursuant to 42 C.F.R. 422.208, 42 C.F.R. 438.6(h), and 42 C.F.R. 438.210(e).
- (2) A UM program description referenced in subsection (1)(a)2.d. of this section shall:
 - (a) Outline the UM program's structure;
 - (b) Define the authority and accountability for UM activities, including activities delegated to another party; and
 - (c) Include the:
 1. Scope of the program;
 2. Processes and information sources used to determine service coverage, clinical necessity, and appropriateness and effectiveness;
 3. Policies and procedures to evaluate:
 - a. Care coordination;
 - b. Discharge criteria;
 - c. Site of services;
 - d. Levels of care;
 - e. Triage decisions; and
 - f. Cultural competence of care delivery; and
 4. Processes to review, approve, and deny services as needed.
 - (3) Only a physician with clinical expertise in treating an enrollee's medical condition or disease shall be authorized to make a decision to deny a service authorization request or authorize a service in an amount, duration, or scope that is less than requested by the enrollee.
 - (4) A medical necessity review process shall be in accordance with Section 45 of this administrative regulation.

Section 45. Service Authorization and Notice. (1) For the processing of a request for initial and continuing authorization of a service, an MCO shall identify what constitutes medical necessity

- and establish a written policy and procedure, which includes a timeframe for:
- (a) Making an authorization decision; and
 - (b) If the service is denied or authorized in an amount, duration, or scope which is less than requested, providing a notice to an enrollee and provider acting on behalf of and with the consent of an enrollee.
 - (2) For an authorization of a service, an MCO shall make a decision:
 - (a) As expeditiously as the enrollee's health condition requires; and
 - (b) Within two (2) business days following receipt of a request for service.
 - (3) The timeframe for making an authorization decision referenced in subsection (2) of this section may be extended:
 - (a) By the:
 1. Enrollee, or the provider acting on behalf of and with content of an enrollee, if the enrollee requests an extension; or
 2. MCO, if the MCO:
 - a. Justifies to the department, upon request, a need for additional information and how the extension is in the enrollee's interest;
 - b. Gives the enrollee written notice of the extension, including the reason for extending the authorization decision timeframe and the right of the enrollee to file a grievance if the enrollee disagrees with that decision; and
 - c. Makes and carries out the authorization decision as expeditiously as the enrollee's health condition requires and no later than the date the extension expires; and
 - (b) Up to fourteen (14) additional calendar days.
 - (4) If an MCO denies a service authorization or authorizes a service in an amount, duration, or scope which is less than requested, the MCO shall provide:
 - (a) A notice to the:
 1. Enrollee, in writing, as expeditiously as the enrollee's condition requires and within two (2) business days of receipt of the request for service; and
 2. Requesting provider, if applicable;
 - (b) For an adverse action relating to medical necessity and a coverage denial, a notice to the enrollee, which shall:
 1. Meet the language and formatting requirements established in 42 C.F.R. 438.404;
 2. Include the:
 - a. Action the MCO or its subcontractor, if applicable, has taken or intends to take;
 - b. Reason for the action;
 - c. Right of the enrollee or provider who is acting on behalf of the enrollee to file an MCO appeal;
 - d. Right of the enrollee to request a state fair hearing;
 - e. Procedure for filing an appeal and requesting a state fair hearing;
 - f. Circumstance under which an expedited resolution is available and how to request it; and
 - g. Right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstance under which the enrollee may be required to pay the costs of these services; and
 3. Be provided:
 - a. At least ten (10) days before the date of action if the action is a termination, suspension, or reduction of a covered service authorized by the department, department designee, or enrollee's MCO, except the department may shorten the period of advance notice to five (5) days before the date of action because of probable fraud by the enrollee;
 - b. By the date of action for the following:
 - (i) The death of a member;
 - (ii) A signed written enrollee statement requesting service termination or giving information requiring termination or reduction of services in which the enrollee understands this must be the result of supplying the information;
 - (iii) The enrollee's address is unknown and mail directed to the enrollee has no forwarding address;
 - (iv) The enrollee has been accepted for Medicaid services by another local jurisdiction;

(v) The enrollee's admission to an institution results in the enrollee's ineligibility for more services;

(vi) The enrollee's physician prescribes a change in the level of medical care;

(vii) An adverse decision has been made regarding the preadmission screening requirements for a nursing facility admission, pursuant to 907 KAR 1:755, on or after January 1, 1989; and

(viii) The safety or health of individuals in a facility would be endangered, if the enrollee's health improves sufficiently to allow a more immediate transfer or discharge, an immediate transfer or discharge is required by the enrollee's urgent medical needs, or an enrollee has not resided in the nursing facility for thirty (30) days;

c. On the date of action, if the action is a denial of payment;

d. As expeditiously as the enrollee's health condition requires and within two (2) business days following receipt of a request;

e. When the MCO carries out its authorization decision, as expeditiously as the enrollee's health condition requires and no later than the date the extension as identified in subsection (3) of this section expires;

f. If a provider indicates or the MCO determines that following the standard timeframe could seriously jeopardize the enrollee's life or health, or ability to attain, maintain or regain maximum function, as expeditiously as the enrollee's health condition requires and no later than two (2) business days after receipt of the request for service; and

g. For an authorization decision not made within the timeframe identified in subsection (2) of this section, on the date the timeframe expires as this shall constitute a denial.

Section 46. Health Risk Assessment. An MCO shall:

(1) Conduct an initial health risk assessment of an enrollee at the implementation of the MCO program within 180 days from enrolling the individual;

(2) After the initial implementation of the MCO program, conduct an initial health risk assessment of an enrollee within ninety (90) days of enrolling the individual if the individual has not been enrolled with the MCO in a prior twelve (12) month period;

(3) Use health care professionals in the health risk assessment process;

(4) Screen an enrollee who it believes to be pregnant within thirty (30) days of enrollment;

(5) If an enrollee is pregnant, refer the enrollee for prenatal care;

(6) Use a health risk assessment to determine an enrollee's need for:

(a) Care management;

(b) Disease management;

(c) A behavioral health service;

(d) A physical health service or procedure; or

(e) A community service.

Section 47. Care Coordination and Management. An MCO shall:

(1) Have a care coordinator and a case manager to arrange, assure delivery of, monitor, and evaluate care, treatment, and services for an enrollee;

(2) Have guidelines for care coordination that shall be approved by the department prior to implementation;

(3) Develop a plan of care for an enrollee in accordance with 42 C.F.R. 438.208;

(4) Have policies and procedures to ensure access to care coordination for a DCBS client or a DAIL client;

(5) Provide information on and coordinate services with the Women, Infants and Children program; and

(6) Provide information to an enrollee and a provider regarding:

(a) An available care management service; and

(b) How to obtain a care management service.

Section 48. Quality Assessment and Performance Improvement (QAPI) Program. An MCO shall:

(1) Have a quality assessment and performance improvement (QAPI) program that shall:

(a) Conform to the requirements of 42 C.F.R. 438, subpart D;

(b) Assess, monitor, evaluate, and improve the quality of care

provided to an enrollee;

(c) Provide for the evaluation of:

1. Access to care;

2. Continuity of care;

3. Health care outcomes; and

4. Services provided or arranged for by the MCO;

(d) Demonstrate the linkage of Quality Improvement (QI) activities to findings from a quality evaluation; and

(e) Be developed in collaboration with input from enrollees;

(2) Submit annually to the department a description of its QAPI program;

(3) Conduct and submit to the department an annual review of the program;

(4) Maintain documentation of:

(a) Enrollee input;

(b) Response;

(c) A performance improvement activity; and

(d) MCO feedback to an enrollee;

(5)(a) Have or obtain within four (4) years of initial implementation National Committee for Quality Assurance (NCQA) accreditation for its Medicaid product line; and;

(b) After obtaining NCQA accreditation, maintain the accreditation;

(6) If the MCO has NCQA accreditation:

(a) Submit to the department a copy of its current certificate of accreditation with a copy of the complete accreditation survey report; and

(b) Maintain the accreditation;

(7) Integrate behavioral health service indicators into its QAPI program;

(8) Include a systematic, on-going process for monitoring, evaluating, and improving the quality and appropriateness of a behavioral health service provided to an enrollee;

(9) Collect data, monitor, and evaluate for evidence of improvement to a physical health outcome resulting from integration of behavioral health into an enrollee's care; and

(10) Annually review and evaluate the effectiveness of the QAPI program.

Section 49. Quality Assessment and Performance Improvement Plan. (1) An MCO shall:

(a) Have a written QAPI work plan that:

1. Outlines the scope of activities;

2. Is submitted quarterly to the department; and

3. Sets goals, objectives, and timelines for the QAPI program;

(b) Set new goals and objectives:

1. At least annually; and

2. Based on a finding from:

a. A quality improvement activity or study;

b. A survey result;

c. A grievance or appeal;

d. A performance measure; or

e. The External Quality Review Organization;

(c) Be accountable to the department for the quality of care provided to an enrollee;

(d) Obtain approval from the department for its QAPI program and annual QAPI work plan;

(e) Have an accountable entity within the MCO:

1. To provide direct oversight of its QAPI program; and

2. That shall review reports from the quality improvement committee referenced in paragraph (h) of this subsection;

(f) Review its QAPI program annually;

(g) Modify its QAPI program to accommodate a review finding or concern of the MCO if a review finding or concern occurs;

(h) Have a quality improvement committee that shall:

1. Be responsible for the QAPI program;

2. Be interdisciplinary;

3. Include:

a. Providers and administrative staff; and

b. Health professionals with knowledge of and experience with individuals with special health care needs;

4. Meet on a regular basis;

5. Document activities of the committee;

6. Make committee minutes and a committee report available to the department upon request; and

7. Submit a report to the accountable entity referenced in paragraph (c) of this subsection that shall include:

- a. A description of the QAPI activities;
- b. Progress on objectives; and
- c. Improvements made;

(i) Require a provider to participate in QAPI activities in the provider agreement or subcontract; and

(j) Provide feedback to a provider or a subcontractor regarding integration of or operation of a corrective action necessary in a QAPI activity if a corrective action is necessary.

(2) If a QAPI activity of a provider or a subcontractor is separate from an MCO's QAPI program, the activity shall be integrated into the MCO's QAPI program.

Section 50. QAPI Monitoring and Evaluation. (1) Through its QAPI program an MCO shall:

(a) Monitor and evaluate the quality of health care provided to an enrollee;

(b) Study and prioritize health care needs for performance measurement, performance improvement, and development of practice guidelines;

(c) Use a standardized quality indicator:

1. To assess improvement, assure achievement of at least a minimum performance level, monitor adherence to a guideline, and identify a pattern of over and under utilization of a service; and

2. Which shall be:

a. Supported by a valid data collection and analysis method; and

b. Used to improve clinical care and services;

(d) Measure a provider performance against a practice guideline and a standard adopted by the quality improvement committee;

(e) Use a multidisciplinary team to analyze and address data and systems issues; and

(f) Have practice guidelines that shall:

1. Be:

a. Disseminated to a provider, or upon request, to an enrollee;

b. Based on valid and reliable medical evidence or consensus of health professionals;

c. Reviewed and updated; and

d. Used by the MCO in making a decision regarding utilization management, a covered service and enrollee education;

2. Consider the needs of enrollees; and

3. Include consultation with network providers.

(2) If an area needing improvement is identified by the QAPI program, the MCO shall take a corrective action and monitor the corrective action for improvement.

Section 51. Quality and Member Access Committee. (1) An MCO shall:

(a) Have a Quality and Member Access Committee (QMAC) composed of:

1. Enrollees who shall be representative of the enrollee population; and

2. Individuals from consumer advocacy groups or the community who represent the interests of enrollees in the MCO; and

(b) Submit to the department annually a list of enrollee representatives participating in the QMAC.

(2) A QMAC committee shall be responsible for reviewing:

(a) Quality and access standards;

(b) The grievance and appeals process;

(c) Policy modifications needed based on reviewing aggregate grievance and appeals data;

(d) The member handbook;

(e) Enrollee education materials;

(f) Community outreach activities; and

(g) MCO and department policies that affect enrollees.

Section 52. External Quality Review. (1) In accordance with 42 U.S.C. 1396a(a)(30), the department shall have an independent external quality review organization (EQRO) annually review the quality of services provided by an MCO.

(2) An MCO shall:

(a) Provide information to the EQRO as requested to fulfill the requirements of the mandatory and optional activities required in 42 C.F.R. Parts 433 and 438; and

(b) Cooperate and participate in external quality review activities in accordance with the protocol established in 42 C.F.R. 438 subpart E.

(3) The department shall have the option of using information from a Medicare or private accreditation review of an MCO in accordance with 42 C.F.R. 438.360.

(4) If an adverse finding or deficiency is identified by an EQRO conducting an external quality review, an MCO shall correct the finding or deficiency.

Section 53. Health Care Outcomes. An MCO shall:

(1) Comply with the requirements established in 42 C.F.R. 438.240 relating to quality assessment and performance improvement;

(2) Collaborate with the department to establish a set of unique Kentucky Medicaid managed care performance measures which shall:

(a) Be aligned with national and state preventive initiatives; and

(b) Focus on improving health;

(3) In collaboration with the department and the EQRO, develop a performance measure specific to individuals with special health care needs;

(4) Report activities on performance measures in the QAPI work plan referenced in Section 49 of this regulation;

(5) Submit an annual report to the department after collecting performance data which shall be stratified by:

(a) Medicaid eligibility category;

(b) Race;

(c) Ethnicity;

(d) Gender; and

(e) Age;

(6) Collect and report HEDIS data annually; and

(7) Submit to the department:

(a) The final auditor's report issued by the NCQA certified audit organization;

(b) A copy of the interactive data submission system tool used by the MCO; and

(c) The reports specified in MCO Reporting Requirements.

Section 54. Performance Improvement Projects (PIPs). (1) An MCO shall:

(a) Implement PIPs to address aspects of clinical care and non-clinical services;

(b) Collaborate with local health departments, behavioral health agencies, and other community-based health or social service agencies to achieve improvements in priority areas;

(c) Initiate a minimum of two (2) PIPs each year with at least one (1) PIP relating to physical health and at least one (1) PIP relating to behavioral health;

(d) Report on a PIP using standardized indicators;

(e) Specify a minimum performance level for a PIP; and

(f) Include the following for a PIP:

1. The topic and its importance to enrolled members;

2. Methodology for topic selection;

3. Goals of the PIP;

4. Data sources and collection methods;

5. An intervention; and

6. Results and interpretations.

(2) A clinical PIP shall address preventive and chronic healthcare needs of enrollees including:

(a) The enrollee population;

(b) A subpopulation of the enrollee population; and

(c) Specific clinical need of enrollees with conditions and illnesses that have a higher prevalence in the enrolled population.

(3) A non-clinical PIP shall address improving the quality, availability, and accessibility of services provided by an MCO to enrollees and providers.

(4) The department may require an MCO to implement a PIP specific to the MCO if:

(a) A finding from an EQRO review referenced in Section 52 or

an audit indicates a need for a PIP; or

(b) Directed by CMS.

(5) The department shall be authorized to require an MCO to assist in a statewide PIP which shall be limited to providing the department with data from the MCO's service area.

Section 55. Enrollee and Provider Surveys. (1) An MCO shall:

(a) Conduct an annual survey of enrollee and provider satisfaction of the quality and accessibility to a service provided by an MCO;

(b) Satisfy a member satisfaction survey requirement by participating in the Agency for Health Research and Quality's current Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) for Medicaid Adults and Children, which shall be administered by an NCQA-certified survey vendor;

(c) Provide a copy of the current CAHPS survey referenced in paragraph (b) of this subsection to the department;

(d) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;

(e) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and

(f) Provide to the department:

1. A copy of the results of the enrollee and provider surveys referenced in paragraph (a) of this subsection;

2. A description of a methodology to be used to conduct surveys;

3. The number and percentage of enrollees and providers surveyed;

4. Enrollee and provider survey response rates;

5. Enrollee and provider survey findings; and

6. Interventions conducted or planned by the MCO related to activities in this section.

(2) The department shall:

(a) Approve enrollee and provider survey instruments prior to implementation; and

(b) Approve or disapprove an MCO's provider survey tool within fifteen (15) days of receipt of the survey tool.

(3) If an MCO conducts a survey that targets a subpopulation's perspective or experience with access, treatment, and services, the MCO shall comply with the requirements established in subsection (1)(e) and (f) of this section.

Section 56. Prompt Payment of Claims (1) In accordance with 42 U.S.C. 1396a(a)(37), an MCO shall:

(a) Implement claims payment procedures that ensure that:

1. Ninety (90) percent of all provider claims for which no further written information or substantiation is required in order to make payment are paid or denied within thirty (30) days of the date of receipt of the claims; and

2. Ninety nine (99) percent of all claims are processed within ninety (90) days of the date of receipt of the claims; and

(b) Have prepayment and postpayment claims review procedures that ensure the proper and efficient payment of claims and management of the program.

(2) An MCO shall:

(a) Comply with the prompt payment provisions established in:

1. 42 C.F.R. 447.45; and

2. KRS 205.593, KRS 304.14-135, and KRS 304.17A-700-730;

and

(b) Notify a requesting provider of a decision to:

1. Deny a claim; or

2. Authorize a service in an amount, duration, or scope that is less than requested.

(3) The payment provisions in this section shall apply to a payment to:

(a) A provider within the MCO network; and

(b) An out-of-network provider.

Section 57. Payments to an MCO. (1) The department shall provide an MCO a per enrollee, per month capitation payment whether or not the enrollee receives a service during the period covered by the payment except for an enrollee whose eligibility is determined due to being unemployed in accordance with 45 C.F.R.

233.100.

(2) The monthly capitation payment for an enrollee whose eligibility is determined due to being unemployed, shall be prorated from the date of eligibility.

(3) A capitation rate referenced in subsection (1) of this section shall:

(a) Meet the requirements of 42 C.F.R. 438.6(c); and

(b) Be approved by the Centers for Medicare and Medicaid Services; and

(4)(a) The department shall apply a risk adjustment to a capitation rate referenced in subsection (4) of this section in an amount that shall be budget neutral to the department.

(b) The department shall use the latest version of the Chronic Illness and Disability Payment System to determine the risk adjustment referenced in paragraph (a) of this subsection.

Section 58. Recoupment of Payment from an Enrollee for Fraud, Waste and Abuse.

(1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee referenced in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund referenced in subsection (2) of this section within six (6) months, the commonwealth shall have the right to recover the refund.

Section 59. MCO Administration. An MCO shall have executive management responsible for operations and functions of the MCO that shall include:

(1) An executive director who shall:

(a) Act as a liaison to the department regarding a contract between the MCO and the department;

(b) Be authorized to represent the MCO regarding an inquiry pertaining to a contract between the MCO and the department;

(c) Have decision making authority; and

(d) Be responsible for following up regarding a contract inquiry or issue;

(2) A medical director who shall be:

(a) A physician licensed to practice medicine in Kentucky;

(b) Actively involved in all major clinical programs and quality improvement components of the MCO; and

(c) Available for after-hours consultation;

(3) A dental director who shall be:

(a) Licensed by a dental board of licensure in any state;

(b) Actively involved in all oral health programs of the MCO; and

(c) Available for after-hours consultation;

(4)(a) A finance officer who shall oversee the MCO's budget and accounting systems; and

(b) An internal auditor who shall ensure compliance with adopted standards and review expenditures for reasonableness and necessity;

(5) A quality improvement director who shall be responsible for the operation of:

(a) The MCO's quality improvement program; and

(b) A subcontractor's quality improvement program;

(6) A behavioral health director who shall be:

(a) A behavioral health practitioner;

(b) Actively involved in all of the MCO's programs or initiatives relating to behavioral health; and

(c) Responsible for the coordination of behavioral health services provided by the MCO or any of its behavioral health subcontractors;

(7) A case management coordinator who shall be responsible for coordinating and overseeing case management services and continuity of care for MCO enrollees;

(8) An early and periodic screening, diagnosis, and treatment (EPSDT) coordinator who shall coordinate and arrange for the provision of EPSDT services and EPSDT special services for MCO enrollees;

(9) A foster care and subsidized adoption care liaison who

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shall serve as the MCO's primary liaison for meeting the needs of an enrollee who is:

- (a) A child in foster care; or
- (b) A child receiving state-funded adoption assistance;
- (10) A guardianship liaison who shall serve as the MCO's primary liaison for meeting the needs of an enrollee who is a ward of the commonwealth;
- (11) A management information systems director who shall oversee, manage, and maintain the MCO's management information system;
- (12) A program integrity coordinator who shall coordinate, manage, and oversee the MCO's program integrity functions;
- (13) A pharmacy director who shall coordinate, manage, and oversee the MCO's pharmacy program;
- (14) A compliance director who shall be responsible for the MCO's:
 - (a) Financial and programmatic accountability, transparency, and integrity; and
 - (b) Compliance with:
 - 1. All applicable federal and state law;
 - 2. Any administrative regulation promulgated by the department relating to the MCO; and
 - 3. The requirements established in the contract between the MCO and the department;
- (15) A member services director who shall:
 - (a) Coordinate communication with MCO enrollees; and
 - (b) Respond in a timely manner to an enrollee seeking a resolution of a problem or inquiry;
- (16) A provider services director who shall:
 - (a) Coordinate communication with MCO providers and sub-contractors; and
 - (b) Respond in a timely manner to a provider seeking a resolution of a problem or inquiry; and
- (17) A claims processing director who shall ensure the timely and accurate processing of claims.

Section 60. MCO Reporting Requirements. An MCO shall:

- (1) Submit to the department a report as required by MCO Reporting Requirements;
- (2) Verify the accuracy of data and information on a report submitted to the department;
- (3) Analyze a required report to identify an early pattern of change, a trend, or an outlier before submitting the report to the department; and
- (4) Submit the analysis required in subsection (3) of this section with a required report.

Section 61. Health Care Data Submission and Penalties. (1)(a) An MCO shall submit an original encounter record and denial encounter record, if any, to the department weekly.

(b) An original encounter record or a denial encounter record shall be considered late if not received by the department within four (4) calendar days from the weekly due date.

(c) Beginning on the fifth calendar day late, the department shall withhold \$500 per day for each day late from an MCO's total capitation payments for the month following non submission of an original encounter record and denial encounter record.

(2)(a) If an MCO fails to submit health care data derived from processed claims or encounter data in a form or format established in the MCO Reporting Requirements for one (1) calendar month, the department shall withhold an amount equal to five (5) percent of the MCO's capitation payment for the month following non submission.

(b) The department shall retain the amount referenced in paragraph (a) of this subsection until the data is received and accepted by the department, less \$500 per day for each day late.

(3)(a) The department shall transmit to an MCO an encounter record with an error for correction by the MCO.

(b) An MCO shall have ten (10) days to submit a corrected encounter record to the department.

(c) If an MCO fails to submit a corrected encounter record within the time frame specified in paragraph (b) of this subsection, the department shall be able to assess and withhold for the month following the non submission, an amount equal to one-tenth of a

percent of the MCO's total capitation payments per day until the corrected encounter record is received and accepted by the department.

Section 62. Program Integrity. An MCO shall comply with:

- (1) 42 C.F.R. 438.608;
- (2) 42 U.S.C. 1396a(a)(68); and
- (3) The requirements established in the MCO Program Integrity Requirements.

Section 63. Third Party Liability and Coordination of Benefits.

(1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

- (a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;
- (b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;
- (c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and
- (d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.

(3) In accordance with 907 KAR 1:011 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, the enrollee's rights to an MCO for a medical support or payment from a third party for a medical service provided by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that shall be liable to pay for a service provided by the MCO.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

(5) An MCO shall have a process for third party liability and coordination of benefits in accordance with Third Party Liability and Coordination of Benefits.

Section 64. Management Information System. (1) An MCO shall:

(a) Have a management information system that shall:

- 1. Provide support to the MCO operations; and
- 2. Include a:
 - a. Member subsystem;
 - b. Third party liability subsystem;
 - c. Provider subsystem;
 - d. Reference subsystem;
 - e. Claim processing subsystem;
 - f. Financial subsystem;
 - g. Utilization and quality improvement subsystem; and
 - h. Surveillance utilization review subsystem; and

(b) Transmit data to the department:

- 1. In accordance with 42 C.F.R. 438; and
- 2. The Management Information System Requirements.

(2) If an MCO subcontracts for services, the MCO shall provide guidelines for its subcontractor to the department for approval.

Section 65. Kentucky Health Information Exchange (KHIE). (1) An MCO shall:

(a) Submit to the KHIE:

- 1. An adjudicated claim within twenty-four (24) hours of the final claim adjudication; and
- 2. Clinical data as soon as it is available;
- (b) Make an attempt to have a PCP in the MCO's network connect to KHIE within:

- 1. One (1) year of enrollment in the MCO's network; or
- 2. A timeframe approved by the department if greater than one (1) year; and

(c) Encourage a provider in its network to establish connectivity with the KHIE.

(2) The department shall:

- (a) Administer an electronic health record incentive payment program; and
- (b) Inform an MCO of a provider that has received an electron-

ic health record incentive payment.

Section 66. MCO Qualifications and Maintenance of Records.

(1) An MCO shall:

- (a) Be licensed by the Department of Insurance as a health maintenance organization or an insurer;
- (b) Have a governing body;
- (c) Have protection against insolvency in accordance with:
 - 1. 806 KAR 3:190; and
 - 2. 42 C.F.R. 438.116;
- (d) Maintain all books, records, and information related to MCO providers, recipients, or recipient services, and financial transactions for:

- 1. A minimum of five (5) years in accordance with 907 KAR 1:672; and
- 2. Any additional time period as required by federal or state law; and

(e) Submit a request for disclosure of information from the public to the department within twenty-four (24) hours.

(2) No information shall be disclosed by an MCO pursuant to a request it received without prior written authorization from the department.

(3) The books, records, and information referenced in subsection (1)(d) of this section, shall be available upon request of a reviewer or auditor during routine business hours at the MCO's place of operations.

(4) MCO staff shall be available upon request of a reviewer or auditor during routine business hours at the MCO's place of operations.

Section 67. Prohibited Affiliations. The policies or requirements:

- (1) Imposed on a managed care entity in 42 U.S.C. 1396u-2(d)(1) shall apply to an MCO; and
- (2) Established in 42 C.F.R. 438.610 shall apply to an MCO.

Section 68. Termination of MCO Participation in the Medicaid Program. The department shall terminate an MCO Participation in accordance with KRS Chapter 45A.

Section 69. Incorporation by Reference. (1) The following is incorporated by reference into this administrative regulation:

- (a) The "MCO Reporting Requirements", July 2011 edition;
- (b) The "MCO Program Integrity Requirements", July 2011 edition;
- (c) The "Early and Periodic Screening, Diagnosis and Treatment Program Periodicity Schedule", July 2011 edition;
- (d) The "Third Party Liability and Coordination of Benefits", July 2011 edition; and
- (e) The "Management Information Systems Requirements", July 2011 edition.

(2) The material referenced in subsection (1) of this section shall be available at:

- (a) <http://www.chfs.ky.gov/dms/incorporated.htm>; or
- (b) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

NEVILLE WISE, Acting Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 28, 2011

FILED WITH LRC: October 28, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2011 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2011, 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, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Wanda Fowler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) Region three (3) is comprised of Jefferson County and fifteen (15) other counties neighboring or nearby Jefferson County. Under managed care, each Medicaid recipient (except for those excluded from managed care participation) residing outside of region three (3) will be given a choice of enrolling with one (1) of three (3) managed care organizations (MCOs) for the purpose of receiving Medicaid services and benefits. The three (3) MCOs are CoventryCares, Kentucky Spirit Health Plan and WellCare. Recipients residing in region three (3) will remain under the responsibility of the managed care organization, Passport Health Plan, that currently serves that region. Individuals who fail to choose an MCO will be assigned to one by the Department for Medicaid Services. Some individuals, including recipients residing in a nursing facility or in an intermediate care facility for individuals with mental retardation or a developmental disability, individuals receiving services through a home and community based waiver (or "1915c waiver"), individuals eligible for Medicare and certain categories of children under age nineteen (19), to name a few, will be excluded from managed care enrollment. The excluded individuals will remain under the umbrella of the Kentucky Medicaid "fee-for-service" reimbursement/delivery model. The proposed changes under the waiver and any necessary plan revisions will be contingent upon the approval of the Centers for Medicare and Medicaid Services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) Transforming the majority of the Medicaid program from a fee-for-service model into a managed care model is necessary to improve quality of care, facilitate access to care, and to effectively manage costs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) DMS anticipates that this action will effectively manage costs while enhancing service quality and facilitating access to care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Kentucky Medicaid Program managed care policies and requirements for every region in Kentucky except for region three (3.) DMS anticipates that this action will effectively manage costs while enhancing service quality and facilitating access to care.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid providers, Medicaid recipients (except those excluded from managed care) and the three (3) managed care organizations providing Medicaid covered services under contract with the Commonwealth will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid recipients who participate in managed care must either choose a managed care organization or be assigned to one (1) if they fail to choose one (1) within the time period required. Managed care organizations will be responsible for providing Medicaid covered services to recipients enrolled with them. In order to be reimbursed for providing care (covered under managed care) to Medicaid recipients, providers must enroll with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients should benefit from the following components of managed care: coordinated care, a medical home focused on improving health outcomes, a plan of care which coordinates physical and behavioral health, and the MCO emphasis on wellness and prevention. Managed care organizations will benefit by receiving payments from DMS pursuant to their contract with the Commonwealth.

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

(a) Initially: Rather than increase expenditures, DMS estimates that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$281.6 million (state and federal combined) in state fiscal year (SFY) 2012 with a November 1, 2011 implementation. The impact on the Medicaid budget for SFY 2012 takes into consideration the one-time incurred claims cost for Medicaid recipients enrolled in managed care for services received by them prior to November 1, 2011 as well as other factors.

(b) On a continuing basis: DMS projects that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$464.1 million (state and federal combined) in SFY 2013 and \$552.5 million (federal and state combined) in SFY 2014. These estimates may vary from the actual enrollment and are subject to change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

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

(9) Tiering: Is tiering applied? Tiering is applied in that certain individuals are excluded from managed care enrollment. Federal regulation or law excludes the individuals from being enrolled into managed care.

ther, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. A managed care program is not federally mandated for Medicaid programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this change relates to provision of managed care but does not impose additional or stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A managed care method of administering the program is being implemented but stricter requirements are not imposed. A managed care program is not federally mandated for Medicaid programs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation. Additionally, county-owned hospitals, university hospitals, local health departments, and primary care centers owned by government entities will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 438 and this administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Rather than increase expenditures, DMS estimates that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$281.6 million (state and federal combined) in state fiscal year (SFY) 2012 with a November 1, 2011 implementation. The impact on the Medicaid budget for SFY 2012 takes into consideration the one-time incurred claims cost for Medicaid recipients enrolled in managed care for services received by them prior to November 1, 2011 as well as other factors.

(d) How much will it cost to administer this program for subsequent years? DMS projects that implementing the administrative regulation will reduce Medicaid benefit expenditures by approximately \$464.1 million (state and federal combined) in SFY 2013 and \$552.5 million (federal and state combined) in SFY 2014. These estimates may vary from the actual enrollment and are subject to change.

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. A managed care program is not federally mandated for Medicaid programs.

2. State compliance standards. KRS 205.520(3) states, "Fur-

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 7, 2011

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Monday, November 7, 2011, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the October 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, and Joey Pendleton, and Representatives Johnny Bell, Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Andy Crocker, Personnel Board; Joe R. Cowles, Personnell Cabinet; Jennifer Jones, Kentucky Retirement System; Richard Carroll, Board of Accountancy; Bill Adcock, Jim Grawe, Margaret Hazlette, Board of Social Work; Mark Brengelman, Sienna Newman, Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters; Margaret Everson, Rocky Pritchert, Department of Fish and Wildlife Resources; Don Dott, State Nature Preserves Commission; John C. Cummings, Verman R. Winburn, Parole Board; Allison Jessee, Patrick Shirley, Office for the Blind; Melissa Beasley, Clay Lamb, Office of Unemployment Insurance; Sandy Chapman, Russell Coy, Blanche Minor, DJ Wasson, Cecilia Webber, Maggie Woods, Department of Insurance; Stephanie Bell, Helen Helton, Public Service Commission; Jamie Eads, Tim West, Horse Racing Commission; Dawn Bellis, Lee Etta Cummings, Jerry Lunsford, George Mann, Department of Housing, Buildings and Construction; Michele Bushong, Matt McKinley, Curt Pendergrass, Marissa Vega Velez, Chandra Venetozzi, Cabinet for Health and Family Services; Steven Cook, University of Kentucky Center on Drugs and Alcohol Research; and Marty White, Kentucky Spirit.

The Administrative Regulation Review Subcommittee met on Monday, November 7, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL BOARD: Board

101 KAR 1:335. Employee actions. Andy Crocker, general counsel, represented the board.

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 Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:210 & E. 2012 Plan Year Handbook for the Public Employee Health Insurance Program. Joe Cowles, deputy executive director, Office of Legal Services, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct two typographical errors in the existing administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:440. Kentucky Retirement Systems Trustee Education Program. Jennifer Jones, interim general counsel, represented the systems.

In response to a question by Co-Chair Bowen, Ms. Jones stated that the Trustee Education Program was being amended at this

time because of a recent audit. The amendments implemented changes recommended by the Auditor of Public Accounts.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: State Board of Accountancy: Board

201 KAR 1:160. Peer reviews. Richard Carroll, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, 3, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work: Board

201 KAR 23:050. Renewal, termination, reinstatement of license. Margaret Hazlette, executive director; James Grawe, assistant attorney general; and William Adcock, board member, represented the board.

In response to questions by Representative Lee, Ms. Hazlette stated that the requirements of this administrative regulation applied to social workers licensed by the board. Social workers employed by state government should not be impacted because they were exempt from licensure under KRS Chapter 335. The requirements only applied to those individuals if they chose to be licensed.

In response to questions by Representative Lee, Mr. Grawe stated that the \$100 penalty applied if a licensee renewed an expired license. Additionally, Ms. Hazlette stated that the board established the new penalty to simplify the renewal process for expired licenses. It replaced the previous penalty structure which titrated the amount of the penalty based on the length of expiration.

In response to questions by Co-Chair Bell, Ms. Hazlette stated that social workers employed by nonprofit agencies should not be affected by this administrative regulation either. They were also exempt from licensure and would only have to comply with the new requirements if they voluntarily obtained licensure.

201 KAR 23:075. Continuing education. In response to a question by Co-Chair Bell, Ms. Hazlette stated that the board amended the domestic violence education requirement to correct an error and to comply with its current statutes.

Board of Prosthetics, Orthotics, and Pedorthics: Board

201 KAR 44:010. Fees. Sienna Newman, board chair, and Mark Brengelman, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to accurately reflect the name of the agency; and (2) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:020. Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to accurately reflect the name of the agency; (2) to amend the RELATES TO paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the material incorporated by reference to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

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201 KAR 44:030. Alternative Mechanism Requirements for licensure as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter prior to January 1, 2013 for applicants in practice who are not currently certified.

In response to a question by Co-Chair Bowen, Ms. Newman stated that this administrative regulation implemented the new statutory licensure requirements for orthotists, prosthetists, pedorthists, and orthotic fitters. It established a pathway to licensure for professionals already working in those fields.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to accurately reflect the name of the agency; (2) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Sections 1 through 5 to cross-reference a form that is incorporated by reference in 201 KAR 44:020. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:040. Professional Conduct and Code of Ethics.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to accurately reflect the name of the agency; and (2) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs and Sections 2 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:050. Per diem of board members.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to accurately reflect the name of the agency; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to match the statutory authority provided by KRS 319B.020(6); and (3) to amend Section 1 to delete the per diem compensation for board members in accordance with KRS 319B.020(6). Without objection, and with agreement of the agency, the amendments were approved.

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, general counsel, and Rocky Pritchert, migratory board program coordinator, represented the department.

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

400 KAR 2:090. Management, use, and protection of nature preserves. Donald Dott, director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to specify that the provisions for vehicular access lanes only apply to internal access lanes; (2) to amend Section 18 to specify criteria for making decisions regarding permission for research or educational activities; (3) to amend Section 21 to add an incorporation by reference section incorporating the "Collecting/Access Permit" application and the "Research Permit" application; (4) to amend Sections 5, 6, 7, 10, and 15 to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency; and (5) to amend Sections 6, 7, 8, 13, 15, and 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board: Board

501 KAR 1:030. Determining parole eligibility. Verman Winburn, board chair, and John Cummings, staff attorney, represented the board.

In response to a question by Co-Chair Bell, Mr. Winburn stated that some parole provisions in 2011 House Bill 463 had delayed

effective dates such as changes to case management. However, the amendments to this administrative regulation implemented provisions regarding an inmate's parole eligibility date that were already in effect.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete unnecessary definitions; (2) to amend Section 2 to use statutory terminology; (3) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office for the Blind: Department for the Blind

782 KAR 1:020. Definitions for 782 KAR Chapter 1. Allison Jessee, director of consumer services, and Patrick Shirley, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

782 KAR 1:030. Scope and nature of services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4, 5, 12, 16, 17, and 20 to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 7, 12, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

782 KAR 1:040. Appeal procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to make a CONFORMING AMENDMENT to correct an inconsistency between the currently effective regulation and the proposed regulation filed by the agency; and (2) to amend the RELATES TO paragraph and Sections 1, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

782 KAR 1:070. Certified driver training program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Employment and Training: Unemployment Insurance

787 KAR 1:210. Employer contribution rates. Melissa Beasley, assistant director, and Clay Lamb, staff attorney, represented the office.

In response to questions by Senator Givens, Ms. Beasley stated that there were 2,000 reimbursing employers in the state. Those employers submitted reports on a quarterly basis. Additionally, the administration of the unemployment insurance program was entirely federally-funded. Lastly, the office amended the rate notice form to update its terminology and to limit voluntary payments by employers to every other year. While the annual notice included information about making voluntary payments, the remainder of the form clarified that an employer was not eligible to do so each year.

In response to a question by Co-Chair Bowen, Ms. Lamb stated that this administrative regulation was amended in response to recommendations by the Unemployment Insurance Task Force.

PUBLIC PROTECTION CABINET: Department of Insurance: Agent Licensing Division: Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:070. Examinations. Sharon Clark, commissioner; Maggie Woods, director; and Sandy Chapman, assistant director, represented the division.

Financial Standards and Examination Division: Captive Insurers

806 KAR 49:050. Captive Risk Retention Groups. Sharon Clark, commissioner, and Russell Coy, captive insurance manager, represented the division.

A motion was made and seconded to approve the following amendments: to amend the TITLE, STATUTORY AUTHORITY paragraph, and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: State Board on Electric Generations and Transmission Siting: Utilities

807 KAR 5:100. Board application fees. Stephanie Bell, deputy executive director, and Helen Helton, general counsel, 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 correct 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 the TITLE and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:110. Board proceedings.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct 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, 2, 3, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to make CONFORMING AMENDMENTS to Sections 8 and 9 to correct inconsistencies between the currently effective administrative regulation and the filed administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Thoroughbred Racing

810 KAR 1:090. Kentucky Thoroughbred Development Fund. Jamie Eads, director, Division of Incentives and Development, and Tim West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct statutory citations; (2) to amend Section 1 to delete unnecessary definitions; (3) to amend the RELATES TO paragraph and Sections 1, 2, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code

815 KAR 7:125. Kentucky Residential Code. Dawn Bellis, general counsel, and George Mann, deputy commissioner, represented the division.

In response to a question by Representative Damron, Ms. Bellis stated that the division received one public comment regarding the new HVAC standards. While the new standards required HVAC systems to be programmed at a particular temperature, the

requirement only applied at installation. After installation, the consumer could adjust the setting.

In response to a question by Senator Givens, Ms. Bellis stated that most programmable thermostats were already pre-set by the manufacturer and would be in compliance with the new standards.

In response to a question by Senator Pendleton, Ms. Bellis stated that the code requirements for tape used in duct work were not new requirements. The required tape was specially formulated for that particular use. It should also be readily available.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Health Policy:

Certificate of Need

900 KAR 6:075. Certificate of Need nonsubstantive review. Michele Bushong, health policy specialist, and Chandra Venettozzi, health data administrator, represented the office.

In response to a question by Representative Lee, Ms. Venettozzi stated that the review requirements for psychiatric residential treatment facilities were not amended in response to the needs of any one facility. The changes resulted from comments the office received.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Public Health and Safety: Radiology

902 KAR 100:142. Wire line service operations. Matt McKinley, radiation health branch manager; Curt Pendergrass, radioactive material section supervisor; and Marissa Velez, radiation health specialist, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 6, 7, 8, 9, 11, 12, 19, 20, 21, 22, 23, and 27 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Developmental Health, Developmental and Intellectual Disabilities: Division of Behavioral Health: Substance Abuse

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs. Steven Cook, research analyst, and Lee Etta Cummings, DUI program manager, represented the division. (This administrative regulation was discussed, and amended, prior to its deferral from the October 2011 Administrative Regulation Review Subcommittee meeting. That amendment summary was included in the October report of this Subcommittee.)

In response to a question by Senator Givens, Ms. Cummings stated that the division had submitted amendments for approval to resolve concerns discussed at the previous meeting of the Subcommittee. The amendments would enable the two programs that were currently using telecommunication equipment to deliver instruction to continue to do so. Additionally, evaluation studies would be conducted to determine if there was a difference in performance outcomes depending on the method of program delivery.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4, 6, and 8 to amend minor typographical errors; and (2) to amend Section 7 to establish a process to enable the programs that have delivered instruction via video telecommunication equipment on the effective date of this administrative regulation to continue to use that equipment in the delivery of instruction. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the December 6, 2011, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:180. Employee performance evaluation system.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; State Assessment

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103 KAR 8:010. Watercraft allocation.

GENERAL GOVERNMENT CABINET: Real Estate Appraisers Board: Board

201 KAR 30:310 & E. Fees for registration of appraisal management companies.

201 KAR 30:320 & E. Surety bond.

201 KAR 30:330 & E. Application for registration.

201 KAR 30:360. Operation of an appraisal management company.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:085. Enforcement.

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.

General Provisions

405 KAR 7:091. General practice provisions.

Inspection and Enforcement

405 KAR 12:020. Enforcement.

TRANSPORTATION CABINET: Office of Transportation Delivery: Mass Transportation

603 KAR 7:080. Human service transportation delivery.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:420. Child fatality or near fatality investigations.

The Subcommittee adjourned at 2:00 p.m. until December 6, 2011.

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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 REVIEW ON
NATURAL RESOURCES**

Meeting on October 6, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources for its meeting of October 6, 2011, having been referred to the Committee on October 5, 2011, pursuant to KRS 13A.290(6):

301 KAR 1:015
301 KAR 1:152
301 KAR 1:201
401 KAR 42:005
401 KAR 42:011
401 KAR 42:020
401 KAR 42:030
401 KAR 42:040
401 KAR 42:045
401 KAR 42:050
401 KAR 42:060
401 KAR 42:070
401 KAR 42:080
401 KAR 42:090
401 KAR 42:095
401 KAR 42:200
401 KAR 42:250
401 KAR 42:290
401 KAR 42:300
401 KAR 42:315
401 KAR 42:316
401 KAR 42:320
401 KAR 42:330
401 KAR 42:335
401 KAR 42:340
401 KAR 47:205
401 KAR 47:207
401 KAR 48:205
401 KAR 48:206
401 KAR 48:207
401 KAR 48:208

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 6, 2011 meeting, which are hereby incorporated by reference.

**INTERIM JOINT COMMITTEE REVIEW ON HEALTH
AND WELFARE**

Meeting on October 19, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of October 19, 2011, having been referred to the Committee on October 5, 2011, pursuant to KRS 13A.290(6):

201 KAR 9:091
201 KAR 20:161
201 KAR 20:370
201 KAR 22:045
201 KAR 22:053
900 KAR 5:020 & E
908 KAR 3:060
921 KAR 2:040
921 KAR 3:090 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 19, 2011 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

F - 2

The Locator Index lists all administrative regulations published in VOLUME 38 of the Administrative Register from July 2011 through June 2012. 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 37 are those administrative regulations that were originally published in VOLUME 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.

KRS Index

F - 12

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 38 of the Administrative Register.

Technical Amendment Index

F - 19

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2011 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 - 20

The Subject Index is a general index of administrative regulations published in VOLUME 38 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
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VOLUME 37

The administrative regulations listed under VOLUME 37 are those administrative regulations that were originally published in Volume 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 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
- **** Emergency expired after 180 days
- (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.)

31 KAR 5:010E	2128	2-1-11
Replaced	2542	6-3-11
31 KAR 6:030E	2352	3-10-11
Replaced	2828	7-1-11
32 KAR 1:030E	1381	11-2-10
Replaced	2828	7-1-11
32 KAR 1:190E	1382	11-2-10
32 KAR 2:130E	2130	2-7-11
Replaced	2256	6-3-11
101 KAR 2:095E	2522	3-31-11
Replaced		(See 38 Ky.R.)
101 KAR 2:102E	2525	3-31-11
Replaced		(See 38 Ky.R.)
101 KAR 3:015E	2530	3-31-11
Replaced		(See 38 Ky.R.)
103 KAR 15:195E	2535	4-1-11
Replaced		(See 38 Ky.R.)
201 KAR 8:008E	2807	4-21-11
Expired		10-18-11
201 KAR 8:532E	2808	4-21-11
Replaced		(See 38 Ky.R.)
201 KAR 8:550E	2143	2-2-11
Replaced	2876	8-5-11
201 KAR 8:562E	2812	4-21-11
Replaced		(See 38 Ky.R.)
201 KAR 43:010E	2817	4-29-11
201 KAR 43:020E	2818	4-29-11
201 KAR 43:030E	2820	4-29-11
201 KAR 43:040E	2821	4-29-11
401 KAR 51:052E	2352	3-14-11
Replaced		8-4-11
815 KAR 10:070E	2824	5-10-11
Replaced		(See 38 Ky.R.)
900 KAR 5:020E	3005	5-6-11
Replaced		10-19-11
922 KAR 1:420E	1960	1-3-11
Expired	****	7-2-11

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 2:060		
Amended	2250	
As Amended	2539	
16 KAR 3:050		
Amended	1500	
As Amended	1963	
16 KAR 6:030		
Amended	2665	
31 KAR 5:010		
Amended	2254	
As Amended	2542	6-3-11

31 KAR 6:030		
Amended	2443	
As Amended	2828	7-1-11
32 KAR 1:030		
Amended	1502	
32 KAR 1:190		
Amended	1504	
32 KAR 2:130		
Amended	2256	
101 KAR 1:325		
Amended	2666	7-21-11
101 KAR 2:095		
Amended	2669	(See 38 Ky.R.)
101 KAR 2:102		
Amended	2672	(See 38 Ky.R.)
101 KAR 3:015		
Amended	2677	(See 38 Ky.R.)
102 KAR 1:178	2303	
103 KAR 3:010		
Amended	2258	
As Amended	2543	
103 KAR 3:030		
Amended	2263	
As Amended	2547	
103 KAR 3:040		
Amended	2273	
As Amended	2556	
103 KAR 3:050		
Amended	760	
103 KAR 15:195	2769	(See 38 Ky.R.)
201 KAR 3:045		
Amended	2891	
201 KAR 3:081(r)	3020	
201 KAR 3:090	3021	
201 KAR 8:532	3022	(See 38 Ky.R.)
201 KAR 8:550	2308	9-13-11
Amended	2876	8-5-11
201 KAR 8:560	626	
201 KAR 8:562	3027	(See 38 Ky.R.)
201 KAR 12:083		
Amended	2282	
As Amended	2829	7-1-11
201 KAR 20:056		
Amended	2892	(See 38 Ky.R.)
201 KAR 20:059		
Amended	2046	
201 KAR 20:062		
Amended	2895	8-17-11
201 KAR 20:070		
Amended	2900	8-17-11
201 KAR 20:110		
Amended	2902	8-17-11
201 KAR 20:215		
Amended	2905	8-17-11
201 KAR 20:225		
Amended	2907	8-17-11
201 KAR 20:240		
Amended	2909	8-17-11
201 KAR 20:310		
Amended	2911	8-17-11
201 KAR 20:411		
Amended	2913	8-17-11
201 KAR 20:470		(See 38 Ky.R.)
Amended	2915	8-17-11
201 KAR 26:115		
Amended	1511	
As Amended	1976	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
201 KAR 26:121			Amended	1009	
Amended	1513		Amended	1695	
201 KAR 26:125			As Amended	1988	
Amended	1514		201 KAR 42:020		
As Amended	1977		Amended	1011	
201 KAR 26:130			Amended	1696	
Amended	1516		As Amended	1989	
As Amended	1977		201 KAR 42:030		
201 KAR 26:155			Amended	1012	
Amended	1518		As Amended	1989	
As Amended	1978		201 KAR 42:035		
201 KAR 26:171			Amended	1013	
Amended	1520		Amended	1697	
As Amended	1979		As Amended	1990	
201 KAR 26:175			201 KAR 42:040		
Amended	1523		Amended	1015	
201 KAR 26:180			Amended	1699	
Amended	1526		As Amended	1991	
201 KAR 26:185			201 KAR 42:050		
Amended	1527		Amended	1016	
As Amended	1982		Amended	1700	
201 KAR 26:190			As Amended	1992	
Amended	1529		201 KAR 42:060		
As Amended	1983		Amended	1018	
201 KAR 26:200			Amended	1702	
Amended	1532		As Amended	1993	
As Amended	1984		201 KAR 42:070		
201 KAR 26:215			Amended	1020	
Amended	1533		Amended	1704	
201 KAR 26:230			As Amended	1993	
Amended	1535		201 KAR 42:080	1113	
As Amended	1985		Amended	1705	
201 KAR 26:270			As Amended	1994	
Amended	1537		201 KAR 42:040	2700	
201 KAR 26:290			201 KAR 42:110		
Amended	1539		Amended	1022	
201 KAR 26:310			As Amended	1996	
As Amended	1987		201 KAR 43:010	3031	(See 38 Ky.R.)
201 KAR 30:040			201 KAR 43:020	3032	
Amended	101		201 KAR 43:030	3034	
201 KAR 39:010	2507		201 KAR 43:040	3035	
Withdrawn		9-15-11	301 KAR 1:152	2772	
201 KAR 39:030			Withdrawn	7-8-11	
Amended	2451		301 KAR 1:155		
Withdrawn		9-15-11	Amended	2056	
201 KAR 39:040			Amended	2430	
Amended	2453		As Amended	2565	
Withdrawn		9-15-11	301 KAR 2:049		
201 KAR 39:050			Amended	228	
Amended	2453		301 KAR 2:095		
Withdrawn		9-15-11	Amended	2682	8-4-11
201 KAR 39:060			301 KAR 2:178		
Amended	2457		Amended	2065	
Withdrawn		9-15-11	As Amended	2568	
201 KAR 39:070			301 KAR 2:300		
Amended	2459		Amended	2683	(See 38 Ky.R.)
Withdrawn		9-15-11	400 KAR 2:090		
201 KAR 39:080			Amended	2920	
Amended	2460		401 KAR 5:006		
Withdrawn		9-15-11	Amended	1757	
201 KAR 39:090			Amended	2434	
Amended	2461		401 KAR 8:020		
Withdrawn		9-15-11	Amendment	2924	(See 38 Ky.R.)
201 KAR 39:100			401 KAR 10:030		
Amended	2464		Amended	2071	
Withdrawn		9-15-11	Amended	2655	8-5-211
201 KAR 39:120			401 KAR 42:005		
Amended	2466		Amended	2686	(See 38 Ky.R.)
Withdrawn	9-15-11		401 KAR 42:011		
201 KAR 41:100	1112		Amended	2691	(See 38 Ky.R.)
As Amended	1987		401 KAR 42:020		
201 KAR 42:010			Amended	2693	(See 38 Ky.R.)

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Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
401 KAR 42:030 Amended	2696	(See 38 Ky.R.)	501 KAR 3:080 Amendment	2952	(See 38 Ky.R.)
401 KAR 42:040 Amended	2700	(See 38 Ky.R.)	501 KAR 3:090 Amendment	2954	(See 38 Ky.R.)
401 KAR 42:045 Amended	2773	(See 38 Ky.R.)	501 KAR 3:100 Amendment	2956	(See 38 Ky.R.)
401 KAR 42:050 Amended	2702	(See 38 Ky.R.)	501 KAR 3:110 Amendment	2958	(See 38 Ky.R.)
401 KAR 42:060 Amended	2704	(See 38 Ky.R.)	501 KAR 3:120 Amendment	2959	(See 38 Ky.R.)
401 KAR 42:070 Amended	2706	(See 38 Ky.R.)	501 KAR 3:130 Amendment	2961	(See 38 Ky.R.)
401 KAR 42:080 Amended	2709	(See 38 Ky.R.)	501 KAR 3:140 Amendment	2964	(See 38 Ky.R.)
401 KAR 42:090 Amended	2711	(See 38 Ky.R.)	501 KAR 3:150 Amendment	2966	(See 38 Ky.R.)
401 KAR 42:095 Amended	2775	(See 38 Ky.R.)	501 KAR 3:160 Amendment	3038	(See 38 Ky.R.)
401 KAR 42:200 Amended	2713	(See 38 Ky.R.)	501 KAR 3:170 Amendment	3040	(See 38 Ky.R.)
401 KAR 42:250 Amended	2715	(See 38 Ky.R.)	501 KAR 7:010 Amended	2969	(See 38 Ky.R.)
401 KAR 42:290 Amended	2726	(See 38 Ky.R.)	501 KAR 7:020 Amended	2970	(See 38 Ky.R.)
401 KAR 42:300 Amended	2729	(See 38 Ky.R.)	501 KAR 7:030 Amended	2972	(See 38 Ky.R.)
401 KAR 42:315 Amended	2777	10-6-11	501 KAR 7:040 Amended	2973	(See 38 Ky.R.)
401 KAR 42:316 Amended	2731	(See 38 Ky.R.)	501 KAR 7:050 Amended	2975	(See 38 Ky.R.)
401 KAR 42:320 Amended	2733	(See 38 Ky.R.)	501 KAR 7:060 Amended	2978	(See 38 Ky.R.)
401 KAR 42:330 Amended	2735	(See 38 Ky.R.)	501 KAR 7:070 Amended	2979	(See 38 Ky.R.)
401 KAR 42:335 Amended	2738	(See 38 Ky.R.)	501 KAR 7:080 Amended	2981	(See 38 Ky.R.)
401 KAR 42:340 Amended	2739	(See 38 Ky.R.)	501 KAR 7:090 Amended	2982	(See 38 Ky.R.)
401 KAR 47:205 Amended	2778	(See 38 Ky.R.)	501 KAR 7:100 Amended	2984	10-7-11
401 KAR 47:207 Amended	2781	(See 38 Ky.R.)	501 KAR 7:110 Amended	2985	(See 38 Ky.R.)
401 KAR 48:205 Amended	2784	(See 38 Ky.R.)	501 KAR 7:120 Amended	2987	(See 38 Ky.R.)
401 KAR 48:206 Amended	2788	(See 38 Ky.R.)	501 KAR 7:130 Amended	2989	(See 38 Ky.R.)
401 KAR 48:207 Amended	2792	(See 38 Ky.R.)	501 KAR 7:140 Amended	2990	(See 38 Ky.R.)
401 KAR 48:208 Amended	2795	(See 38 Ky.R.)	501 KAR 7:150 Amended	3041	(See 38 Ky.R.)
401 KAR 49:080 Amended	1349		501 KAR 13:010 Amended	2992	(See 38 Ky.R.)
401 KAR 51:052 Amended	1707		502 KAR 12:010 Amended	1546	
500 KAR 8:010 Amendment	2470	8-4-11	As Amended	1997	
501 KAR 2:020 Amendment	2927	(See 38 Ky.R.)	505 KAR 1:130 Amended	2289	
501 KAR 2:040 Amendment	2929	(See 38 Ky.R.)	Amended	2881	8-5-2011
501 KAR 2:050 Amendment	2930	10-7-11	601 KAR 1:018 Amended	808	
501 KAR 2:060 Amendment	2932	10-7-11	As Amended	2000	
501 KAR 2:070 Amendment	2933	(See 38 Ky.R.)	603 KAR 4:035 Amended	2741	
501 KAR 3:010 Amendment	2935	10-7-11	Withdrawn	7-13-2011	
501 KAR 3:020 Amendment	2936	(See 38 Ky.R.)	702 KAR 7:125 Amended	2291	
501 KAR 3:030 Amendment	2938	(See 38 Ky.R.)	As Amended	2572	
501 KAR 3:040 Amendment	2940	(See 38 Ky.R.)	703 KAR 5:200 Amended	3042	
501 KAR 3:050 Amendment	2942	(See 38 Ky.R.)	787 KAR 1:070 Amended	2994	9-2-11
501 KAR 3:060 Amendment	2943	(See 38 Ky.R.)	787 KAR 1:090 Amended	2996	(See 38 Ky.R.)
501 KAR 3:070 Amendment	2949	(See 38 Ky.R.)	787 KAR 1:210 Amended	2898	(See 38 Ky.R.)
501 KAR 3:080 Amendment	2951	(See 38 Ky.R.)	787 KAR 2:020		

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Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	1551		811 KAR 1:250	898	
803 KAR 25:089			As Amended	2871	7-1-11
Amended	1078		811 KAR 1:280	2318	
Amended	1492		As Amended	2575	
803 KAR 25:091			811 KAR 2:010		
Amended	1080		Amended	847	
As Amended	2005		As Amended	2872	7-1-11
806 KAR 2:150	1938		Reprint		(See 38 Ky.R.)
Amended	2438		811 KAR 2:060		
806 KAR 3:170			Amended	851	7-1-11
Amended	2746		811 KAR 2:150	1136	
806 KAR 9:220			Amended	1723	
Amended	1554	(See 38 Ky.R.)	As Amended	2015	
806 KAR 12:120			811 KAR 2:160	900	7-1-11
Amended	2754		811 KAR 2:180	2328	
806 KAR 13:120			As Amended	2584	
Amended	1557		811 KAR 2:190	2338	
As Amended	2007		Amended	2883	(See 38 Ky.R.)
806 KAR 44:010	1603		815 KAR 7:120		
As Amended	2010		Amended	1092	
808 KAR 10:010			Amended	1727	
Amended	2482		815 KAR 7:125		
As Amended	2836	7-1-11	Amended	1095	
808 KAR 10:030			Amended	1729	
Amended	2484		815 KAR 10:070	3045	(See 38 Ky.R.)
As Amended	2837	7-1-11	815 KAR 20:030		
808 KAR 10:050			Amended	2757	
Amended	2487		815 KAR 20:034		
As Amended	2839	7-1-11	Amended	1568	
808 KAR 10:200			As Amended	2017	
Amended	2488		815 KAR 20:070		
As Amended	2839	7-1-11	Amended	2759	8-5-11
808 KAR 10:240			815 KAR 35:060		
Amended	2492		Amended	3000	(See 38 Ky.R.)
As Amended	2842	7-1-11	815 KAR 35:100		
808 KAR 10:260			Amended	3002	(See 38 Ky.R.)
Amended	2493		900 KAR 5:020		
As Amended	2842	7-1-11	Amended	3005	10-19-11
808 KAR 10:280			900 KAR 6:030		
Amended	2494		Amended	2762	(See 38 Ky.R.)
As Amended	2843	7-1-11	900 KAR 7:030		
808 KAR 10:410			Amended	2763	(See 38 Ky.R.)
Amended	2498		902 KAR 8:160		
As Amended	2845	7-1-11	Amended	3006	(See 38 Ky.R.)
808 KAR 10:440			902 KAR 8:165		
Amended	2500		Amended	3010	(See 38 Ky.R.)
As Amended	2847	7-1-11	902 KAR 8:170		
808 KAR 10:450			Amended	3012	(See 38 Ky.R.)
Amended	2503		902 KAR 20:410	1142	
As Amended	2849	7-1-11	Amended	1731	
808 KAR 10:480	2509		As Amended	2019	
As Amended	2850	7-1-11	902 KAR 100:010		
808 KAR 10:490	2511		Amended	1799	
As Amended	2851	7-1-11	As Amended	2594	
810 KAR 1:001			902 KAR 100:021		
Amended	825		Amended	1814	
As Amended	2852	7-1-11	As Amended	2607	
810 KAR 1:011			902 KAR 100:058		
Amended	828		Amended	1820	
As Amended	2855	7-1-11	As Amended	2612	
810 KAR 1:120	895		902 KAR 100:070		
As Amended	2859	7-1-11	Amended	1827	
811 KAR 1:005			As Amended	2618	
Amended	834		902 KAR 100:072		
As Amended	2860	7-1-11	Amended	1837	
Reprint		(See 38 Ky.R.)	As Amended	2627	
811 KAR 1:125			902 KAR 100:165		
Amended	837		Amended	1863	
As Amended	2862	7-1-11	As Amended	2651	
811 KAR 1:240	1130		907 KAR 1:014		
Amended	1720		Amended	551	
As Amended	2013		As Amended	984	

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Regulation Number	37 Ky.R. Page No.	Effective Date	Regulation Number	37 Ky.R. Page No.	Effective Date
907 KAR 1:715			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		
Amended	2298				
Amended	2886	(See 38 Ky.R.)			
908 KAR 3:050					
Amended	1358				
As Amended	2022				
922 KAR 1:420					
Amended	2092				

VOLUME 38

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.)

32 KAR 1:050E	206	7-1-11	Amended	1163	
32 KAR 1:070E	207	7-1-11	13 KAR 2:110	1243	
101 KAR 2:095E		(See 37 Ky.R.)	16 KAR 2:010		
Replaced	482	9-28-11	Amended	68	
101 KAR 2:102E		(See 37 Ky.R.)	As Amended	479	10-7-11
Replaced	484	9-28-11	16 KAR 2:040		
101 KAR 2:210E	731	9-15-11	Amended	635	
101 KAR 3:015E		(See 37 Ky.R.)	As Amended	885	11-14-11
Replaced	488	9-28-11	16 KAR 4:060	71	
103 KAR 15:195E		(See 37 Ky.R.)	As Amended	481	10-7-11
Replaced	13	8-5-11	16 KAR 5:020		
201 KAR 8:532E		(See 37 Ky.R.)	Amended	1169	
Replaced	501	9-13-11	16 KAR 5:040		
201 KAR 8:562E		(See 37 Ky.R.)	Amended	637	
Replaced	504	9-13-11	As Amended	887	11-14-11
201 KAR 30:310E	209	7-7-11	16 KAR 6:030	13	(See 37 Ky.R.)
201 KAR 30:320E	210	7-7-11	As Amended	705	7-11-11
201 KAR 30:330E	211	7-7-11	16 KAR 9:090	705	
301 KAR 2:221E			As Amended	889	11-14-11
Amended	874	9-20-11	31 KAR 3:020	1245	
301 KAR 2:222E			32 KAR 1:050		
Amended	876	9-20-11	Amended	294	
301 KAR 2:225E	732	8-18-11	32 KAR 1:070		
302 KAR 20:052E	1088	11-10-11	Amended	295	
302 KAR 29:061E	11	6-3-11	As Amended	736	
302 KAR 45:010E	456	8-2-11	101 KAR 1:335		
Replaced	903	11-3-11	Amended	809	
815 KAR 4:010E	212	7-8-11	As Amended	1115	
815 KAR 4:025E	215	7-8-11	101 KAR 1:365		
815 KAR 4:030E	217	7-8-11	Amended	1011	
815 KAR 4:040E	219	7-8-11	101 KAR 1:375		
815 KAR 4:050E	221	7-8-11	Amended	641	
815 KAR 4:060E	223	7-8-11	As Amended	890	
815 KAR 4:070E	225	7-8-11	101 KAR 2:046		
815 KAR 10:070E		(See 37 Ky.R.)	As Amended	891	
Replaced	241	8-17-11	101 KAR 2:056		
900 KAR 7:030	1089	10-28-11	Amended	645	
902 KAR 15:020E	227	6-30-11	As Amended	892	
907 KAR 1:595E	459	7-21-11	101 KAR 2:095		(See 37 Ky.R.)
907 KAR 17:005	1093	10-28-11	As Amended	482	9-28-11
921 KAR 3:090E	232	6-30-11	101 KAR 2:102		(See 37 Ky.R.)
Replaced	416	10-19-11	As Amended	484	9-28-11
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	1171	
11 KAR 3:100			101 KAR 2:105		
Amended	49	10-7-11	Amended	646	
As Amended	464		As Amended	893	
11 KAR 15:090			101 KAR 2:106		
Amended	64		Amended	648	
As Amended	476	10-7-11	As Amended	894	
13 KAR 2:020			101 KAR 2:140		
Amended	804		Amended	1176	
			101 KAR 2:180		
			Amended	650	
			101 KAR 2:210		
			Amended	812	
			As Amended	1116	
			101 KAR 3:015		(See 37 Ky.R.)

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As Amended	488	9-28-11	201 KAR 23:050		
Amended	1178		Amended	817	
103 KAR 8:010			201 KAR 23:075		
Amended	73		Amended	818	
103 KAR 3:020			201 KAR 27:011		
Amended	1013		Amended	1191	
103 KAR 15:195		(See 37 Ky.R.)	201 KAR 27:012		
As Amended	13	8-5-11	Amended	1197	
105 KAR 1:140			201 KAR 27:016		
Amended	74		Amended	1200	
As Amended	492		201 KAR 27:017		
As Amended			Amended	1205	
105 KAR 1:190			201 KAR 27:035		
Amended	77		Amended	1208	
As Amended	494	9-28-11	201 KAR 27:055		
105 KAR 1:440			Amended	1209	
Amended	813		201 KAR 27:100		
200 KAR 21:010			Amended	1211	
Amended	84		201 KAR 29:050		
As Amended	500	9-28-11	Amended	300	
200 KAR 21:031	166	9-28-11	Amended	787	
201 KAR 1:160			As Amended	897	11-16-11
Amended	814		201 KAR 30:310	420	
As Amended	1117		Amended	989	
201 KAR 2:170			201 KAR 30:320	421	
Amended	652		201 KAR 30:330	422	
201 KAR 3:045			201 KAR 30:360	423	
As Amended	736		Amended	990	
201 KAR 3:090			201 KAR 30:370	425	
As Amended	737		Withdrawn	8-3-11	
201 KAR 5:110	167		201 KAR 30:375	1069	
Amended	621		201 KAR 36:060		
Reprint	872	11-4-11	Amended	1018	
201 KAR 8:532		(See 37 Ky.R.)	201 KAR 36:070		
As Amended	501	9-13-11	Amended	1021	
201 KAR 8:562		(See 37 Ky.R.)	201 KAR 39:011	1070	
As Amended	504	9-13-11	201 KAR 39:030		
201 KAR 9:091(r)	419	10-19-11	Amended	1022	
201 KAR 14:015			201 KAR 39:040		
Amended	86		Amended	1024	
As Amended	508	10-7-11	201 KAR 39:050		
201 KAR 14:180			Amended	1026	
Amended	1183		201 KAR 39:060		
201 KAR 18:192			Amended	1028	
Amended	654		201 KAR 39:070		
As Amended	894		Amended	1030	
201 KAR 20:056		(See 37 Ky.R.)	201 KAR 39:080		
As Amended	235	8-17-11	Amended	1031	
201 KAR 20:085			201 KAR 39:090		
Amended	1185		Amended	1032	
201 KAR 20:161			201 KAR 39:100		
Amended	297	10-19-11	Amended	1035	
201 KAR 20:260			201 KAR 39:120		
Amended	1186		Amended	1037	
201 KAR 20:340			201 KAR 42:035		(See 37 Ky.R.)
Amended	1189		Amended	93	
201 KAR 20:370			201 KAR 43:010		(See 37 Ky.R.)
Amended	299	10-19-11	As Amended	899	
201 KAR 20:410			201 KAR 44:010	426	
Amended	1190		As Amended	1118	
201 KAR 20:470		(See 37 Ky.R.)	201 KAR 44:020	427	
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As Amended	737		As Amended	1119	
201 KAR 22:020			201 KAR 44:030	429	
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Withdrawn		8-12-11	As Amended	1120	
Amended	657		201 KAR 44:040	431	
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201 KAR 22:045			As Amended	1121	
Amended	89	10-19-11	201 KAR 44:050	433	
201 KAR 22:053			As Amended	1123	
Amended	91	10-19-11	301 KAR 1:015		

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301 KAR 1:152	434	10-6-11	As Amended	544	10-6-11
301 KAR 1:201			401 KAR 42:320		(See 37 Ky.R.)
Amended	305	10-6-11	As Amended	545	10-6-11
301 KAR 2:082			401 KAR 42:330		(See 37 Ky.R.)
Amended	1038		Amended	287	
301 KAR 2:142			As Amended	546	
Amended	1042		As Amended	746	10-6-11
301 KAR 2:221			401 KAR 42:335		(See 37 Ky.R.)
Amended	1044		As Amended	549	10-6-11
301 KAR 2:222			401 KAR 42:340		(See 37 Ky.R.)
Amended	1046		As Amended	549	10-6-11
301 KAR 2:225			401 KAR 47:205		(See 37 Ky.R.)
Amended	821		Amended	290	
301 KAR 2:228	168		As Amended	550	10-6-11
Amended	789		401 KAR 47:207		(See 37 Ky.R.)
301 KAR 2:300		(See 37 Ky.R.)	As Amended	554	10-6-11
As Amended	16	8-5-11	401 KAR 48:205		(See 37 Ky.R.)
301 KAR 3:011	1247		As Amended	556	10-6-11
302 KAR 20:052			401 KAR 48:206		(See 37 Ky.R.)
Amended	1216		As Amended	559	10-6-11
302 KAR 45:010			401 KAR 48:207		(See 37 Ky.R.)
Amended	659		As Amended	562	10-6-11
As Amended	903	11-3-11	401 KAR 48:208		(See 37 Ky.R.)
304 KAR 1:070	1072		As Amended	564	10-6-11
400 KAR 2:090			401 KAR 51:052		(See 37 Ky.R.)
Amended	623		Amended	28	
As Amended	1123		405 KAR 5:085		
401 KAR 8:020		(See 37 Ky.R.)	Amended	662	
As Amended	508	10-7-11	Amended	991	
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Amended	255		Amended	666	
As Amended	510	10-6-11	Amended	994	
401 KAR 42:011		(See 37 Ky.R.)	405 KAR 7:091		
As Amended	514	10-6-11	Amended	670	
401 KAR 42:020		(See 37 Ky.R.)	Amended	998	
Amended	259		405 KAR 12:020		
As Amended	515		Amended	674	
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As Amended	744	10-6-11	Amended	824	
401 KAR 42:040		(See 37 Ky.R.)	As Amended	1127	
Amended	266		501 KAR 1:080		
As Amended	520	10-6-11	Amended	827	
401 KAR 42:045		(See 37 Ky.R.)	501 KAR 2:020		(See 37 Ky.R.)
As Amended	522	10-6-11	As Amended	566	10-7-11
401 KAR 42:050		(See 37 Ky.R.)	501 KAR 2:060		(See 37 Ky.R.)
As Amended	523	10-6-11	As Amended	567	10-7-11
401 KAR 42:060		(See 37 Ky.R.)	501 KAR 3:010		(See 37 Ky.R.)
Amended	269		As Amended	568	10-7-11
As Amended	523	10-6-11	501 KAR 3:020		(See 37 Ky.R.)
401 KAR 42:070		(See 37 Ky.R.)	As Amended	569	10-7-11
Amended	271		501 KAR 3:030		(See 37 Ky.R.)
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Amended	274		As Amended	571	
As Amended	527	10-6-11	As Amended	749	
401 KAR 42:090		(See 37 Ky.R.)	501 KAR 3:050		(See 37 Ky.R.)
As Amended	528	10-6-11	As Amended	750	
401 KAR 42:095		(See 37 Ky.R.)	501 KAR 3:060		(See 37 Ky.R.)
As Amended	529	10-6-11	As Amended	572	10-7-11
401 KAR 42:200		(See 37 Ky.R.)	501 KAR 3:070		(See 37 Ky.R.)
As Amended	529	10-6-11	As Amended	573	10-7-11
401 KAR 42:250		(See 37 Ky.R.)	501 KAR 3:080		(See 37 Ky.R.)
Amended	275		As Amended	574	10-7-11
As Amended	530	10-6-11	501 KAR 3:090		(See 37 Ky.R.)
401 KAR 42:290		(See 37 Ky.R.)	As Amended	574	
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501 KAR 3:120		(See 37 Ky.R.)	As Amended	912	
As Amended	577	10-7-11	502 KAR 13:070		
501 KAR 3:130		(See 37 Ky.R.)	Amended	690	
As Amended	578	10-7-11	As Amended	913	
501 KAR 3:140		(See 37 Ky.R.)	505 KAR 1:130		(See 37 Ky.R.)
As Amended	756		As Amended	18	
501 KAR 3:150		(See 37 Ky.R.)	600 KAR 6:080		
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Amended	310		Amended	1055	
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501 KAR 6:220			Amended	313	
Amended	679		Amended	791	
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Amended	2970		703 KAR 5:230	711	
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Amended	2973		735 KAR 1:020		
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501 KAR 7:050		(See 37 Ky.R.)	782 KAR 1:010		
As Amended	759		Amended	1230	
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Amended	2978		Amended	828	
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As Amended	587	10-7-11	As Amended	1130	
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Amended	2981		Amended	834	
As Amended	588	10-7-11	As Amended	1133	
501 KAR 7:090		(See 37 Ky.R.)	782 KAR 1:070		
Amended	2982		Amended	836	
As Amended	588	10-7-11	As Amended	1134	
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As Amended	589	10-7-11	As Amended	763	
501 KAR 7:120		(See 37 Ky.R.)	787 KAR 1:090		(See 37 Ky.R.)
Amended	2987		As Amended	595	10-7-11
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502 KAR 11:050			Amended	104	10-7-11
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803 KAR 2:500			811 KAR 1:005		(See 37 Ky.R.)
Amended	118	10-7-11	Reprint	5	7-1-11
803 KAR 2:505			811 KAR 1:285	182	
Amended	120		As Amended	777	
As Amended	598	10-7-11	811 KAR 1:290	186	
803 KAR 2:600			As Amended	613	10-7-11
Amended	122	10-7-11	811 KAR 2:010		(See 37 Ky.R.)
806 KAR 3:170		(See 37 Ky.R.)	Reprint	7	7-1-11
Amended	37	9-2-11	811 KAR 2:185	1889	
806 KAR 3:190			As Amended	780	
Amended	1057		811 KAR 2:190		(See 37 Ky.R.)
806 KAR 9:020			As Amended	18	8-5-11
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Amended	802		As Amended	616	10-7-11
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806 KAR 9:070			Amended	334	
Amended	839		As Amended	914	
806 KAR 9:220		(See 37 Ky.R.)	815 KAR 4:025		
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As Amended	599	10-7-11	As Amended	915	
806 KAR 12:120		(See 37 Ky.R.)	815 KAR 4:030	436	
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806 KAR 12:170			As Amended	818	
Amended	329		815 KAR 4:060	442	
806 KAR 17:180			As Amended	919	
Amended	128	10-7-11	815 KAR 4:070	444	
806 KAR 17:545			815 KAR 8: 030		
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806 KAR 49:050			815 KAR 7:120		
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807 KAR 5:076			As Amended	920	
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Withdrawn	8-15-11		815 KAR 35:100		(See 37 Ky.R.)
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Amended	150		900 KAR 6:080		
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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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