

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 39, NUMBER 3
SATURDAY, SEPTEMBER 1, 2012

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, August 15, 2012.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet September 11, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **375-376** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2012 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, SEPTEMBER 11, 2012, at 1:00 p.m., Room 149 Capitol Annex**

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems**

General Rules

- 105 KAR 1:400 & E. Federal taxation limitation year. ("E" expires 11/25/2012) (Deferred from August)
- 105 KAR 1:420. 401(h) account established under 26 USC 401(h). (Deferred from August)
- 105 KAR 1:430. General compliance with federal tax laws. (Deferred from August)

**GENERAL GOVERNMENT CABINET
Board of Nursing**

Board

- 201 KAR 20:230. Renewal of licenses.
- 201 KAR 20:370. Applications for licensure.
- 201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Kentucky Board of Prosthetics, Orthotics, and Pedorthics

Board

- 201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013.
- 201 KAR 44:100. Inactive status.
- 201 KAR 44:110. Licensure by endorsement.
- 201 KAR 44:120. Post residency registration.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services**

Board

- 202 KAR 7:601. Training, education, and continuing education. (Amended After Comments) (Deferred from July)

**CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority**

Economic Development

- 306 KAR 1:011. Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090.

Kentucky Economic Development Finance Authority

- 307 KAR 1:005. Applications for Kentucky Incentive Programs.
- 307 KAR 4:020. Kentucky Enterprise Initiative Act.

Kentucky Business Investment Program

- 307 KAR 8:011. Repeal of 307 KAR 8:010.

Kentucky Reinvestment Act (KRA)

- 307 KAR 9:010. Application for Kentucky Reinvestment Act Program.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water**

Water Quality

- 401 KAR 5:055. Scope and applicability of the KPDES Program.
- 401 KAR 5:060. KPDES application requirements.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections**

Office of the Secretary

- 501 KAR 6:230. Little Sandy Correctional Complex.
- 501 KAR 6:270. Probation and parole policies and procedures.
- 501 KAR 6:999. Corrections secured policies and procedures.

Asset Forfeiture

- 501 KAR 11:011. Repeal of 501 KAR 11:010.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing**

Motor Vehicle Tax

- 601 KAR 9:090. Procedures for inspecting vehicles.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing**

Plumbing

- 815 KAR 20:034. Requirements for approval of continuing education courses and providers.

Division of Building Codes Enforcement

Electrical

- 815 KAR 35:020. Electrical inspections.

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CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

Certificate of Need

- 900 KAR 6:060. Timetable for submission of certificate of need applications.
- 900 KAR 6:085. Implementation of outstanding Certificate of Need when ownership has changed.
- 900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.
- 900 KAR 6:130. Certificate of Need criteria for physician exemption.

Governor's Office of Electronic Health Information

Kentucky Health Information Exchange

- 900 KAR 9:010. Kentucky health information exchange participation. (Not Amended After Comments)

Office of Inspector General

Division of Audits and Investigations

Office of Inspector General

- 906 KAR 1:160 & E. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine. ("E" expires 1/9/2013)

Department for Income Support

Child Support Enforcement

Family Support

- 921 KAR 1:001. Definitions.
- 921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.
- 921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.
- 921 KAR 1:410. Child support collection and enforcement.

REMOVED FROM SEPTEMBER 2012 AGENDA

OFFICE OF THE ATTORNEY GENERAL

Office of Consumer Protection

Division of Consumer Protection

- 40 KAR 2:330. Mold remediation.(Comments Received)

GENERAL GOVERNMENT CABINET

Board of Physical Therapy

Board

- ~~—201 KAR 22:001. Definitions for 201 KAR Chapter 22. (Deferred from August) Withdrawn by Agency~~
- ~~—201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. (Comments Received) Withdrawn by Agency~~

ENERGY AND ENVIRONMENT CABINET

Division for Air Quality

Attainment and Maintenance of the National Ambient Air Quality Standards

- 401 KAR 51:001. Definitions for 401 KAR Chapter 51. (Comments Received; SOC ext.)
- 401 KAR 51:017. Prevention of significant deterioration of air quality. (Comments Received; SOC ext.)
- 401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas. (Comments Received; SOC ext.)

Public Service Commission

Utilities

- 807 KAR 5:001. Rules of procedure. (*Comments Received*)
- 807 KAR 5:006. General rules. (*Comments Received*)
- 807 KAR 5:011. Tariffs. (*Comments Received*)
- 807 KAR 5:076. Alternative rate adjustment procedure for small utilities. (*Comments Received*)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

Health Care-Acquired Conditions and Provider Preventable Conditions

- 907 KAR 14:005 & E. Health care acquired conditions and/or other provider preventable conditions. ("E" expires 12/19/2012) (*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.

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EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
201 KAR 2:020E

This emergency administrative regulation is being promulgated to comply with KRS 218A.205(3)(g). KRS 218A.205(3)(g) requires that the board establish by administrative regulation the requirements for an applicant to obtain a license to practice pharmacy in Kentucky to submit to a criminal background investigation by the Department of the Kentucky State Police and to query of the National Practitioner Data Bank of the United States Department of Health and Human Services. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of KRS 218A.205(3)(g) on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Complier. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JOEL THORNBURY, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Emergency Amendment)

201 KAR 2:020E. Examination.

RELATES TO: KRS 218A.205(3)(g), 315.050
STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.050(2), 315.191(1), (2), (4)(a);
EFFECTIVE: July 20, 2012
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(2) and 315.191(1)(c) authorize[require] the board to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205(3)(g) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.

Section 1. The examination for licensure shall include:

- (1) The North American Pharmacist Licensure Examination (NAPLEX); and
- (2) The Multistate Pharmacy Jurisprudence Examination (MPJE).

Section 2. The passing score on the required examinations shall be:

- (1) At least seventy-five (75) on the basis of the NAPLEX and[.] the MPJE grades shall not be used in computing the NAPLEX; and
- (2) At least seventy-five (75) on the basis of the MPJE.

Section 3. If an applicant fails to obtain the necessary scores in any of the tests described in Section 2 of this administrative regulation, the applicant[he] may upon proper application retake the tests upon the payment of the fee set forth in 201 KAR 2:050 plus any direct costs for test materials and supplies. An applicant who has failed any test may retake that test within one (1) year of the date the applicant first failed[fails] the test without having to reapply.

Section 4. All results of examinations shall be preserved according to the Board of Pharmacy Record Retention Schedule.

Section 5. Fees submitted with an application shall be nonrefundable.

Section 6. Prior to approval for examination, an applicant shall:

- (1) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation; and
- (2) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 7. License. Fee. An applicant shall submit:

- (1) An Initial Application for Pharmacist Licensure pursuant to KRS 315.050; and
- (2) As appropriate, the fee established by 201 KAR 2:050, Section 1(1).

Section 8. Incorporation by Reference. (1) "Initial Application for Pharmacist Licensure", Form 1, 7/2012, is incorporated by reference.

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday 8:00 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time, place, method, manner, scope and subjects of examination and establishes the examination requirements for obtaining a license to practice pharmacy in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the examination requirements to obtain a license to practice pharmacy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding examinations to obtain a license to practice pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for examinations.

(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 will require an applicant to submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner DataBank of the United States Department of Health and Human Services.

(b) The necessity of the amendment to this administrative regulation: Requires applicants that seek to obtain a license to practice pharmacy in Kentucky to submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for examination to obtain a license to practice pharmacy in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to require that individuals that apply for a license to practice pharmacy in

Kentucky submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of the Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Health and Human Services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect around 350 individuals each year that apply for a license to practice pharmacy in Kentucky and will affect the Kentucky Board of Pharmacy and the Department of the Kentucky State Police.

(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: The Board will have to query the National Practitioner Data Bank of the United States Department of Health and Human Services on each applicant and the Department of the Kentucky State Police or the Federal Bureau of Investigation will conduct a nation-wide criminal background investigation on each applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services will be required to pay a fee to the Department of the Kentucky State Police criminal background investigation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful passing of a criminal background investigation and National Practitioner Data Bank of the United States Department of Health and Human Services will be allowed to sit for examinations to obtain a license to practice pharmacy in Kentucky.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: \$7,500 yearly for the cost of the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee will be accessed to an applicant for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(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: A new fee will be accessed to each individual that is applying for a license to practice pharmacy in Kentucky.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any individual applying for a license to practice pharmacy in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy and the Department of the Kentucky State Police will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(g), 315.191(1) requires or authorizes the action taken by this administrative regulation.

(3) 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? \$9,375 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(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? \$9,375 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(c) How much will it cost to administer this program for the first year? \$7,500.

(d) How much will it cost to administer this program for subsequent years? \$7,500.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

201 KAR 2:030E

This emergency administrative regulation is being promulgated to comply with KRS 218A.205(3)(g). KRS 218A.205(3)(g) requires that the board establish by administrative regulation the requirements for an applicant to obtain a license to practice pharmacy in Kentucky to submit to a criminal background investigation by the Department of the Kentucky State Police and to a query of the National Practitioner Data Bank of the United States Department of Health and Human Services. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of KRS 218A.205(3)(g) on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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

JOEL THORNBURY, President

GENERAL GOVERNMENT CABINET

Kentucky Board of Pharmacy
(Emergency Amendment)

201 KAR 2:030E. License transfer.

RELATES TO: KRS 315.210

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.191(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 requires the board to establish conditions for licensure by reciprocity. KRS 218A.205(3)(g) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity.

Section 1. Definitions. (1) "Board" is defined by KRS 315.010(3).

(2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(3) "NABP" means the National Association of Boards of Pharmacy.

Section 2. An applicant licensed in another jurisdiction shall be

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eligible for license transfer, if the:

(1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure at the time the license in the other jurisdiction was granted;

(2) Applicant has held in good standing, an active license to practice pharmacy during the entire year preceding the time of filing an application;

(3) Applicant has:

(a) Completed and certified the ["NABP Preliminary Application for Transfer of Pharmacist License[Pharmaceutic-Licensure"] form; and

(b) Received an ["NABP Official Application for Transfer of Pharmacist License[Pharmaceutic-Licensure"];

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied; and

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal background investigation by means of finger-print check by the Department of Kentucky State Police or the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the ["NABP Preliminary Application for Transfer of Pharmacist License[Pharmaceutic-Licensure"] form, including:

(1) Name, maiden, and other names used currently or previously; and

(2) Address, telephone number;

(3) Date and place of birth, and current age; and

(4) Social Security number;

(5) Citizenship;

(6) Gender;

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received;

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience prior to licensure as a pharmacist, including the State Board of Pharmacy with which the hours are filed;

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses obtained by:

(a) Score transfer; and

(b) Licensure transfer;

(13) Practice and employment, including nonpharmacist employment, from initial licensure to the date of filing the application; and

(14) Record of charges, convictions, and fines imposed, or certification that the applicant has not been convicted, fined, disciplined, or had a license revoked.

Section 4. The board shall accept a license transfer from a jurisdiction that:

(1) Is an active member of the NABP; and

(2) Grants license transfer to a pharmacist pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate

Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. Fee. An applicant shall include the fee specified by 201 KAR 2:050, Section 1(2), (20)[(3)].

Section 7. (1) "NABP Preliminary Application for Transfer of Pharmacist License[Pharmaceutic-Licensure]", [(3/06)], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601[Spindletop Administration Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511], Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time, place, method, manner, scope and subjects of examination and establishes the examination requirements for obtaining a license to practice pharmacy in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the examination requirements to obtain a license to practice pharmacy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding examinations to obtain a license to practice pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for examinations.

(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 will require an applicant to submit to a nation-wide criminal background investigation by means of fingerprint check to the Department of Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(b) The necessity of the amendment to this administrative regulation: Requires applicants that seek to obtain a license to practice pharmacy in Kentucky to submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police or Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for examination to obtain a license to practice pharmacy in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to require that individuals that apply for a license to practice pharmacy in Kentucky submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of the Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect around 400 individuals each year that apply for a license to practice phar-

macy in Kentucky and will affect the Kentucky Board of Pharmacy and the Department of the Kentucky State Police.

(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: The Board will have to query the National Practitioner Data Bank of the United States Department of Health and Human Services on each applicant and the Department of the Kentucky State Police will conduct a criminal background investigation on each applicant

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services will be required to pay a fee to the Department of the Kentucky State Police for a criminal background investigation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful passing of the nation-wide criminal background investigation and National Practitioner Data Bank of the United States Department of Health and Human Services will be allowed to sit for examinations to obtain a license to practice pharmacy in Kentucky.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: \$8,500 yearly for the cost of the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee will be accessed to an applicant for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(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: A new fee will be accessed to each individual that is applying for a license to practice pharmacy in Kentucky.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any individual applying for a license to practice pharmacy in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy and the Department of the Kentucky State Police will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(g), 315.191(1) requires or authorizes the action taken by this administrative regulation.

(3) 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? \$10,000 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(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? \$10,000 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(c) How much will it cost to administer this program for the first year? \$8,500.

(d) How much will it cost to administer this program for subsequent years? \$8,500.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 2:050E

This emergency administrative regulation is being promulgated to comply with KRS 218A.205(3)(g), 315.518(1), 315.520(4). KRS 218A.205(3)(g) requires that the board establish by administrative regulation the requirements for an applicant to obtain a license to practice pharmacy in Kentucky to submit to a criminal background investigation by the Department of the Kentucky State Police and to a query of the National Practitioner Data Bank of the United States Department of Health and Human Services. KRS 315.518(1), 315.520(4) requires the board establish by administrative regulation the requirements for an applicant to obtain a license to operate as a home medical equipment provider. These actions must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of KRS 218A.205(3)(g), 315.518(1), 315.520(4) on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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
JOEL THORNBURY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Emergency Amendment)

201 KAR 2:050E. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.402, 315.518(1), 315.520(4)

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.191(1), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.402(1), 315.518(1), 315.520(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation provides reasonable fees for this agency to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates and the issuance and renewal of licenses and permits:

(1) Application for a licensee for pharmacist examination - \$150;[-]

(2) Application and initial license for a pharmacist license by license transfer - \$250;[-]

(3) Certifying the grades of a licentiate of Kentucky to the licensing agency of another state - ten (10) dollars;[-]

(4) Annual renewal of a pharmacist license - seventy (70) dollars;[-]

(5) Delinquent renewal penalty for a pharmacist license - se-

venty (70) dollars;[-]

(6) Annual renewal of an inactive pharmacist license - ten (10) dollars;[-]

(7) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;[-]

(8) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;[-]

(9) Application for a permit to operate a pharmacy - \$100;[-]

(10) Renewal of a permit to operate a pharmacy - \$100;[-]

(11) Delinquent renewal penalty for a permit to operate a pharmacy - seventy-five (75) dollars;[-]

(12) Change of location or change of ownership of a pharmacy or manufacturer permit - seventy-five (75) dollars;[-]

(13) Application for a permit to operate as a manufacturer - \$100;[-]

(14) Renewal of a permit to operate as a manufacturer - \$100;[-]

(15) Delinquent renewal penalty for a permit to operate as a manufacturer - \$100;[-]

(16) Change of location or change of ownership of a wholesale distributor license - seventy-five (75) dollars;[-]

(17) Application for a license to operate as a wholesale distributor - \$100;[-]

(18) Renewal of a license to operate as a wholesale distributor - \$100;[-]

(19) Delinquent renewal penalty for a license to operate as a wholesale distributor - \$100;

(20) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services - twenty-five (25) dollars;

(21) Application for a license to operate as a home medical equipment supplier - \$200;

(22) Renewal for a license to operate as a home medical equipment supplier - \$200; and

(23) Delinquent renewal penalty for a license to operate as a home medical equipment supplier - \$150.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for services rendered to perform duties and responsibilities.

(b) The necessity of this administrative regulation: This regulation is necessary to establish fees for services rendered to perform duties and responsibilities of the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the fees for services rendered by the board.

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

(a) How the amendment will change this existing administrative regulation: This regulation will establish a fee for a query to the National Practitioner Data Bank of the United States Department of Health and Human Services and a fee for an applicant for a Home Medical Equipment provider, a renewal application, and a delinquent penalty fee.

(b) The necessity of the amendment to this administrative regulation: Requires applicants that seek to obtain a license to practice pharmacy in Kentucky to submit to the National Practitioner

er Data Bank of the United States Department of Health and Human Services and requires a fee for applicants for a Home Medical Equipment provider license, renewal license, or a delinquent penalty fee.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for fees for a query to the National Practitioner Data Bank of the United States Department of Health and Human Services and to obtain a license for a Home Medical Equipment provider, a renewal license, and a delinquent penalty fee.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to collect fees from an applicant seeking to obtain a pharmacist license in the Commonwealth and a Home Medical Equipment provider license, renewal license or a delinquent penalty.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect around 750 individuals each year that apply for a license to practice pharmacy in Kentucky and will affect the Kentucky Board of Pharmacy and the Department of the Kentucky State Police. The board anticipates that this will affect around 400 applicants obtaining a Home Medical Equipment license each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: The Board will have to query the National Practitioner Data Bank of the United States Department of Health and Human Services on each applicant. The Board will require an individual to obtain a license to operate as a Home Medical Equipment provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services and each applicant for a Home Medical Equipment License or Renewal license will pay a \$200 fee each year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful passing of the National Practitioner Data Bank of the United States Department of Health and Human Services will be allowed to sit for examinations to obtain a license to practice pharmacy in Kentucky. Upon a completed application or renewal application an applicant will be able to obtain a license to operate as a Home Medical Equipment Provider.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: \$7,500 yearly for the cost of the query to the National Practitioner Data Bank of the United States Department of Health and Human Services. \$80,000 yearly for the cost of licensing Home Medical Equipment Providers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee will be accessed to an applicant for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services. A fee will be accessed to an applicant to obtain a license or renew a license for a Home Medical Equipment provider.

(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: A new fee will be accessed to each individual that is applying for a license to practice pharmacy in Kentucky. A new fee will be accessed to each applicant to obtain a license or renew a license for a Home Medical Equipment provider.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the

regulation is applicable to any individual applying for a license to practice pharmacy in Kentucky and to applicants to obtain a license or renew a license for a Home Medical Equipment provider.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy and the Department of the Kentucky State Police will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(g), 315.191(1) requires or authorizes the action taken by this administrative regulation.

(3) 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? \$98,750 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(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? \$98,750 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(c) How much will it cost to administer this program for the first year? \$87,500

(d) How much will it cost to administer this program for subsequent years? \$87,500

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

201 KAR 2:061E

This emergency administrative regulation is being promulgated to comply with KRS 218A.205. KRS 218A.205 requires that the board establish by administrative regulation the requirements for receiving anonymous complaints, procedures for investigation of improper, inappropriate, or illegal dispensing of controlled substances, and penalties associated with the improper, inappropriate, or illegal dispensing of controlled substances. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of KRS 218A.205 on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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
JOEL THORNBURY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Emergency Amendment)

201 KAR 2:061E. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

RELATES TO: KRS 218A.205, 315.131, 315.191(4)

STATUTORY AUTHORITY: KRS 218A.205(3)(e), (f), (5), 315.191(1), (4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to the practice of pharmacy, including a process for complaints and hearings. KRS 218A.205(3)(e), (f), and (5) require the board to promulgate administrative regulations relating to complaints, licensure standards, and disciplinary actions. This administrative regulation establishes board procedure for investigations, and the administrative hearings process, and the penalties for violations.

Section 1. (1) A complaint against a licensee may:

(a) Be submitted orally or in writing; and

(b) Originate from a consumer, competitor, health professional, government or provider agency, or other interested party.

(2) A complaint shall be accepted anonymously if the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(3) A complaint shall not be required to be sworn to or notarized. [Complaints against licensees may be oral or written, from such sources as consumers, competitors, health professionals, government and provider agencies, or other interested parties.]

Section 2. (1) Except as provided by subsection (2) of this section, upon receipt of a complaint, the board shall instruct its staff to:

(a) [(4)] Conduct an investigation; and

(b) [(2)] Report the conclusions and recommendations of the investigation to the:

1. [(a)] Executive director; and

2. [(b)] Board member assigned by the board to review conclusions and recommendations relating to an investigation.

(2) If the complaint pertains to the improper, inappropriate, or illegal dispensing of controlled substances, the board shall:

(a) File a report with the Attorney General's office, the Office of Inspector General's office, and the Department of the Kentucky State Police within three (3) business days;

(b) Commence an investigation within seven (7) days of the complaint; and

(c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

Section 3. (1) A panel consisting of the assigned board member, the executive director, and the pharmacy drug inspector shall review the conclusions and recommendation relating to an investigation.

(2) The panel shall recommend one (1) of the following options to the board:

(a) A reprimand restricting the licensee, permit or certificate holder;

(b) The issuance of a formal complaint, order, and notice of hearing;

(c) Dismissal of the case with or without prejudice; or

(d) Returning the case to the inspector for further investigation.

(3) Documentation of a board reprimand shall be maintained in the appropriate board files.

Section 4. (1) With the approval of the board, the executive director shall notify the licensee, permittee, or certificate holder, in

writing, that he or she may request an administrative conference before the executive director and the pharmacy drug inspector to be held prior to the hearing.

(2) The licensee, permit or certificate holder shall be notified that he or she may appear with counsel.

(3) An administrative conference shall be held to determine whether an agreement may be reached to resolve the complaint that is acceptable to all parties.

(4) If an agreement is reached, it shall be submitted to the board for approval and board order.

Section 5. (1) A settlement conference may be requested by the attorney for a licensee, permit or certificate holder.

(2) If the board approves the request, a settlement conference shall be held by the attorney for the licensee, permit or certificate holder, and the board attorney.

(3) If the parties to a settlement conference agree on stipulations, proposed terms, and conditions for an agreed order to resolve the complaint, they shall forward the agreed order to the board for approval.

(4) If the proposed agreed order is approved by the board, the complaint shall be considered resolved and a hearing shall not be held.

Section 6. Hearings. (1) The president of the board or the duly appointed hearing officer shall:

(a) Preside over all administrative hearings; and

(b) Have the authority to:

1. Rule on all motions;
2. Control the procedure of the hearing; and
3. Admit or exclude testimony or other evidence.

(2) Evidence in support of the complaint shall be presented by the counsel for the board.

(3)(a) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the president of the board or the hearing officer appointed to conduct the hearing.

(4) All hearings before the board shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. Board counsel; and
2. Licensee's counsel or licensee;
- (b) Witnesses and evidence in support of the complaint;
- (c) Witnesses and evidence on behalf of the licensee;
- (d) Closing statements in the following order:
 1. Licensee's counsel or licensee; and
 2. Board counsel.

(5)(a) Testimony to be considered by the board may be taken by deposition.

(b) A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing:

1. [A showing] Of inability to attend; and
2. That the other party will have an opportunity to cross-examine at the deposition.

Section 7. Posthearing Proceedings. (1) The board shall deliberate on all cases in closed session.

(2) Board counsel shall not attend, or be involved in any manner with, the closed session.

(3) The specific findings of the board shall be made in open session following the board's deliberation.

Section 8. Penalties. (1) Pursuant to KRS 218A.205(3)(e)1., a licensee convicted of a felony offense related to dispensing a controlled substance shall, at a minimum, be permanently banned from dispensing any controlled substance.

(2) Pursuant to KRS 218A.205(3)(e)2., the board shall impose restrictions short of a permanent ban from dispensing controlled substances on a licensee convicted of a misdemeanor offense

relating to the dispensing of a controlled substance.

(3) Pursuant to KRS 218A.205(3)(e)3., a licensee disciplined by the licensing board of another state relating to the improper, inappropriate, or illegal dispensing of a controlled substance shall, at a minimum, have the same disciplinary action imposed in Kentucky as the disciplinary action imposed by the licensing board of the other state.

(4) Pursuant to KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the board procedure for investigations and the administrative hearing process.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for investigations and the administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding investigations, hearings, and penalties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the investigation, hearing process and penalties.

(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 establish new procedures for the complaint, investigation, and penalties.

(b) The necessity of the amendment to this administrative regulation: Requires the board to set procedures for the receiving of complaints, process of investigations, and penalties.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for investigations, complaints and penalties.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will require the board to receive anonymous complaints, follow procedures for investigations, and set penalties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect any licensee, permittee, or certificate holder.

(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: The Board will have to follow procedures for complaints, investigations, and penalties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees, permittees, and certificate holders will know the procedures in the case there is a complaint against them.

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

(a) Initially: No new costs initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any licensee, permittee, or certificate holder.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205, 315.191(1) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 2:205E

This emergency administrative regulation is being promulgated given the prescription drug epidemic that 2012 Extra Session Ky. Acts ch. 1 seeks to control, standardizing the reporting requirements. This administrative regulation seeks to control, standardizing the reporting requirements; thereby, protecting the public's health, welfare, and safety by ensuring that thefts or losses are reported promptly. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of 2012 (Extra. Sess.) Ky. Acts. ch 1 on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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
JOEL THORNBURY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Emergency Amendment)

201 KAR 2:205E. Pharmacist-in-charge.

RELATES TO: KRS 315.020, 315.0351, 315.191, 315.300, 315.335

STATUTORY AUTHORITY: KRS 315.020(1), 315.0351, 315.191(1)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.020(1) and 315.0351(7) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy. This administrative regulation establishes the requirements relating to a pharmacist-in-charge.

Section 1. Definition~~[Definitions]~~. "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky, or in the appropriate jurisdiction of an out-of-state pharmacy holding a Kentucky Board of Pharmacy permit, who accepts responsibility for the operation of a pharmacy in conformance with all laws and administrative regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of the pharmacy.

Section 2. Duties and Responsibilities. (1) The pharmacist-in-charge shall be so designated in the application for a permit to operate a pharmacy and in each application for renewal of that permit thereafter.

(2) A pharmacist shall~~[may]~~ not serve as a pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he or she is physically present in that pharmacy for a minimum of ten (10) hours per week or the amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Providing notification in writing to the Board of Pharmacy within fourteen (14) calendar days of any change in the:

1. Employment of the pharmacist-in-charge;

2. Employment of staff pharmacists; or~~[and]~~

3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations;~~[and]~~

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies; and

(g) Filing of any report of a theft or loss to:

1. The U. S. Department of Justice Drug Enforcement Agency as required by 21 C.F.R. 1301.76(b);

2. The Department of the Kentucky State Police as required by KRS 315.335; and

3. The board by providing a copy to the board of each report submitted.

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

(a) "Application for Permit to Operate a Pharmacy in Kentucky", Form 1, 07/2012; ~~[(11/92)]; and~~

(b) "Application for Non-Resident Pharmacy Permit", Form 1, 07/2012;

(c) "Application for Resident Pharmacy Renewal", Form 2, 07/2012; and

(d) "Application for Non-Resident Pharmacy Permit Renewal", Form 2, 07/2012. [Permit to Operate an Out-of-State Pharmacy (11/92).]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street [1024 Capital Center Drive, Suite 210], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirement that permit pharmacies place a pharmacist-in-charge as a prerequisite to compounding and dispensing privileges granted by the board.

(b) The necessity of this administrative regulation: This regulation is necessary to require pharmacist-in-charge to file a report of a theft or loss of controlled substance with the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding pharmacist-in-charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for pharmacist-in-charge for reporting a theft or loss of controlled substances.

(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 will require a pharmacist-in-charge to file a report to the board when there is a theft or loss of controlled substances.

(b) The necessity of the amendment to this administrative regulation: Requires Pharmacist-in-charge to file a report with the board when there is a theft or loss of controlled substances.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for pharmacist-in-charge.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to investigate any loss of controlled substances in a pharmacy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect all permitted pharmacies that dispense controlled substances.

(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: The Board will have investigate loss of controlled substances in a pharmacy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A pharmacist-in-charge will file a report with the board regarding the loss of controlled substances.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: No cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds will be required.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacists-in-charge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 2:350E

This emergency administrative regulation is being promulgated to comply with KRS 315.518(1), 315.520(4). KRS 315.518(1), 315.520(4) requires that the board establish by administrative regulation the requirements for an applicant to obtain a license to operate as a home medical equipment provider. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of KRS 315.518(1), 315.520(4) on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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

JOEL THORNBURY, President

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(New Emergency Administrative Regulation)**

201 KAR 2:350E. Home medical equipment service providers.

RELATES TO: KRS 315.512, 315.514, 315.518, 314.520
STATUTORY AUTHORITY: KRS 315.191, 315.518(1), (4), 315.520(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191 authorizes the Board of Pharmacy to promulgate administrative regulations governing home medical equipment and service providers. This administrative regulation establishes the minimum requirements for the licensing of a home medical equipment service provider.

Section 1. General Requirements. (1) A home medical equipment company engaged in providing services in the Commonwealth shall apply for a license from the board in accordance with KRS 315.518 and this administrative regulation.

(2) An agent or employee of a licensee shall not be required to obtain a license if the agent or employee is acting in the usual course of business or employment.

(3) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature, and humidity control, sanitation, space, and security;

(b) Establishing and providing records of annual continuing education for personnel engaged in the delivery, maintenance, repair, cleaning, inventory control, and financial management of home medical equipment and services; and

(c) Providing accurate and precise records of all goods shipped or received including source of receipt, date, quantity, itemized description, and any other information pertinent to the transaction.

(4) An applicant for a home medical equipment license shall prepare and adopt a policy and procedure manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensees will maintain the premises so that the home medical equipment remains secure.

Section 3. Sanitation and Safety Requirements. (1) An applicant for a home medical equipment license located in the Commonwealth of Kentucky shall be inspected by the board prior to the issuance of the license.

(2)(a) The designated business area shall be used exclusively for the sale, rental, and distribution of home medical equipment.

(b) Repairs and cleaning shall be done in a confined, properly ventilated area.

(c) All areas shall be adequately lighted and all areas kept in a clean and sanitary manner.

(3) A home medical equipment supplier shall comply with the maintenance and cleaning requirements established in this subsection. A home medical equipment supplier shall:

(a) Maintain documents demonstrating that a function and safety check of equipment was performed prior to set up;

(b) Maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;

(c) Maintain a Material Safety Data Sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;

(d) Maintain segregated areas on the premises and in delivery vehicles for clean, dirty, and contaminated equipment;

(e) Clean and disinfect equipment according to manufacturer's specifications;

(f) Instruct the patient on proper cleaning techniques as specified by the manufacturer; and

(g) Perform routine inspection, service, and maintenance of

equipment located in the patient's or customer's home according to manufacturers' specifications.

(4) The supplier's services shall be available twenty-four (24) hours, seven (7) days per week if it is essential to the maintenance of life or lack of service might reasonably cause harm.

(5) The supplier shall:

(a) Demonstrate that each piece of equipment has been checked, is free of defects, and operates within the manufacturer's specifications;

(b) Maintain documentation, which shall include the following:

1. The type of equipment;

2. The manufacturer;

3. The model number;

4. The serial number;

5. The date of repair;

6. The specific repair made; and

7. The name of the person or company performing the repair;

(c) Refrain from modifying equipment to the extent that the modification might reasonably cause harm;

(d) Maintain all electrical components so that they do not present fire or shock hazard;

(e) Ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided;

(f) Document all equipment serial numbers and model numbers to ensure that equipment can be retrieved if a recall is initiated; and

(g) Affix an identifying label that contains the name of the provider, address, and phone number.

(6) The supplier shall implement and maintain a written procedure at each location for handling complaints and problems. The procedure shall include a complaint file documenting complaints and problems and resolution of the complaints and problems.

Section 4. License Fee; Renewals. (1) A home medical equipment and services provider shall be licensed by the board prior to engaging in providing home medical equipment and services in the Commonwealth.

(2) An applicant shall submit:

(a)1. A completed Application for Home Medical Equipment License; and

2. The initial application fee established by 201 KAR 2:050, Section 1(21); or

(b)1. A completed Application for Home Medical Equipment License Renewal; and

2. The renewal application fee established by 201 KAR 2:050, Section 1(22).

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

(a) "Application for Home Medical Equipment License", Form 1, 07/2012; and

(b) "Application for Home Medical Equipment License Renewal", Form 2, 07/2012.

(2) This form may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows a home medical equipment provider to be licensed if the applicant meets the requirements of this administrative regulation.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with HB 282.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations that establishes the requirements for a home medical equipment provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a home medical equipment provider to obtain a license.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than 500 home medical equipment providers annually will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will be able to obtain a home medical equipment license to provide home medical equipment to patients in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will be required to pay a fee of \$200 for initial licensure and a renewal fee of \$200 annually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Home medical equipment providers will be able to be licensed to provide home medical equipment to patients in the Commonwealth.

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

(a) Initially: Unknown: there will be cost of completing inspections by the board inspectors (time and travel) and cost of board attorney in review and prosecuting cases of home medical equipment providers.

(b) On a continuing basis: Unknown: there will be costs of completing inspections and cost of board attorney in review and prosecuting cases of home medical equipment providers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funds for implementation and enforcement will come from the fees collected for the initial application fee and annual renewal fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for initial licensure and annual renewals.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to home medical equipment provider.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2012 RS HB 282 and KRS 315.191 requires or authorizes the action taken by this administrative regulation.

3. 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? \$80,000.

(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? \$80,000

(c) How much will it cost to administer this program for the first year? Unknown

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

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

Revenues (+/-): The Board anticipates yearly revenue of \$80,000 (400 applicants x \$200)

Expenditures (+/-): The Board inspectors will be required to inspect the home medical equipment facilities and there will be travel costs; software upgrade, and board attorney fees for prosecuting complaints against home medical equipment providers.

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 5:010E

This emergency administrative regulation is being promulgated to comply with 2012 (Extra. Sess.) Ky. Acts. Ch. 1 (2012 SS HB 1). 2012 SS HB 1 requires the board to promulgate an administrative regulation requiring optometry licensure applicants to submit to a criminal background investigation by the Department of the Kentucky State Police and to query the National Practitioner Data Bank of the United States Department of Health and Human Services. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of 2012 (Extra. Sess.) Ky. Acts. Ch. 1 on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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
JERALD F. COMBS, President

GENERAL GOVERNMENT CABINET Kentucky Board of Optometric Examiners (Emergency Amendment)

201 KAR 5:010E. Application for licensure; endorsement.

RELATES TO: KRS 218A.205(3)(g), 320.220, 320.250, 320.270

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 320.240(7), 320.270(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.220 requires all persons who practice optometry in this state to be licensed by the Kentucky[Ky.] Board of Optometric Examiners. KRS 320.250 establishes criteria for an applicant to apply for a license. KRS 320.270 grants the board the discretion to admit to practice in

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Kentucky persons[- Persons] licensed to practice optometry in other states. KRS 218A.205(3)(g) requires fingerprint-supported criminal record checks and queries to the National Practitioner Data Bank on applicants. This administrative regulation prescribes the procedures to be followed in making application to the board for a license.

Section 1. ~~A[Any]~~ person wishing to apply for a license to practice optometry shall submit to the board, within fifteen (15) days of board review, the following items:

- ~~(1) A completed Application for License to Practice Optometry;~~
- ~~(2)[in addition to a completed application;(4)] Birth certificate;~~
- ~~(3)[(2)] Certified copy of college transcripts received directly from registrar's office;~~
- ~~(4)[(3)] Certified copy of optometry school transcripts received directly from registrar's office;~~
- ~~(5)[(4)] National board results;~~
- ~~(6)[(5)] Therapeutic Management of Ocular Disease, "TMOD" results;~~
- ~~(7)[(6)] Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;~~
- ~~(8)[(7)] Proof of successful completion of State Law Exam results;~~
- ~~(9)[(8)] A recent photograph of head and shoulders, front view;~~
- ~~(10)[and~~
- ~~(9)] A money order or cashier's check payable to the Kentucky State Treasurer in the amount of \$500;~~
- ~~(11) A money order or cashier's check in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer for the purpose of submitting a query on the applicant to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and~~
- ~~(12) Prior to approval for examination, an applicant shall submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation.~~

Section 2. ~~A[Any]~~ person wishing to apply for a license to practice optometry by endorsement shall submit to the board, within fifteen (15) days of board review, the following items:

- ~~(1) A completed Application for License by Endorsement to Practice Optometry;~~
- ~~(2)[in addition to a completed application:~~
- ~~(4)] Verification that the applicant has been licensed in optometry and in active practice the past five (5) years;~~
- ~~(3)[(2)] Information regarding any resolved, pending, or unresolved board action or malpractice suit in any state or territory;~~
- ~~(4)[(3)] Certified copy of college transcripts received directly from registrar's office;~~
- ~~(5)[(4)] Certified copy of optometry school transcripts received directly from registrar's office;~~
- ~~(6)[(5)] Certificate of good standing from the board where the applicant is currently licensed and from all state boards where the applicant has held a license in the past;~~
- ~~(7)[(6)] Copy of credential that proves the applicant is therapeutically licensed;~~
- ~~(8)[(7)] Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;~~
- ~~(9)[(8)] Proof of successful completion of Kentucky State Law Exam;~~
- ~~(10)[(9)] A recent photograph of head and shoulders, front view;~~
- ~~(11)[(10)] A certified check or money order made payable to the Kentucky State Treasurer in the amount of \$700;~~
- ~~(12)[and~~
- ~~(11)] A notarized statement explaining why the applicant wishes to be admitted to practice in Kentucky;~~
- ~~(13) A money order or cashier's check in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer for the purpose of submitting a query on the applicant to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and~~

(14) Results within sixty (60) days of application, and sent directly to the Board, from a national and state fingerprint-supported criminal record check conducted by the Federal Bureau of Investigation or by the Department of Kentucky State Police.

Section 3. (1) A person whose license has been revoked pursuant to KRS 320.280(3)[-] may apply for reinstatement of his or her license.

(2) Except as provided in subsection (3) of this section, a person applying for reinstatement shall submit[furnish the following documentation] to the board:

(a) Evidence of completion of the continuing education requirements established in 201 KAR 5:030;~~[except that an optometrist whose license has been revoked pursuant to KRS 320.280(3) shall obtain the annual continuing education requirement for each year, or any portion of a year, that the license was not renewed up to a maximum of sixty (60) hours;]~~ and

(b) Payment of the annual renewal fee established in 201 KAR 5:090, Section 2.

(3) To apply for reinstatement, an optometrist whose license has been revoked pursuant to KRS 320.280(3) shall submit to the board:

(a) Evidence of completion of the annual continuing education requirement for each year, or any portion of a year, that the license was not renewed up to a maximum of sixty (60) hours; and

(b) Payment of[(c)] the renewal fee off[for an optometrist whose license has been revoked pursuant to KRS 320.280(3), shall be] \$200 for each year, or any portion of a year, that the license was not renewed.

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

(a) "Application for License to Practice Optometry", August 2012[(July 6, 2000 edition)]; and

(b) "Application for License by Endorsement to Practice Optometry", August 2012[(July 6, 2000 edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 2624 Research Park Drive, Suite 305, Lexington, Kentucky 40511, phone (859) 246-2744, Monday through Friday, 8:30 a.m. to 5 p.m.

JERALD COMBS, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure criteria for applicants.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 320.220, 320.250, 320.270, and HB1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that require the board to license optometrists and establish criteria for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the criteria for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides for criminal background checks and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services on all applicants.

(b) The necessity of the amendment to this administrative regulation: HB1 expressly requires criminal background checks and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services on all applicants before licensure may be granted. The current regulation does not require a background check and query.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment includes additional scrutiny required by HB1 before licensure may be granted.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the requirements of applicants for licensure, and the Board when considering those applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board expects approximately 40 first time applicants and 7 applicants by endorsement annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All applicants will have to pay to submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services and provide results of a background check to the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The query will cost each applicant \$25 and the background check by the FBI or Kentucky State Police will cost \$36.50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be considered for licensure.

(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 Board to implement the changes because the aforementioned fees will cover the query, and background check.

(b) On a continuing basis: No new costs will be incurred by the Board to implement the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of this administrative regulation will be generated by the fees charged for the query and background check.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional increases in initial or renewal fees will be required to implement the changes made by this regulation, other than those already discussed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a fee to query the National Practitioner Data Bank of the United States Department of Health and Human Services.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all applicants seeking licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact applicants to the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.220, 320.250, 320.270 and HB1 require and authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. The Board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated from the administrative regulation because the fees charged will cover administrative support and the cost to query.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 5:030E

This emergency administrative regulation is being promulgated to comply with 2012 (Extra. Sess.) Ky. Acts. Ch. 1 (2012 SS HB 1). 2012 SS HB 1 requires the board to promulgate an administrative regulation requiring all optometrists who are authorized to prescribe controlled substances to obtain 7.5% of their continuing education credits in the use of the electronic monitoring system, pain management, or addiction disorders. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of 2012 (Extra. Sess.) Ky. Acts. Ch. 1 on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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
JERALD F. COMBS, President

GENERAL GOVERNMENT CABINET Kentucky Board of Optometric Examiners (Emergency Amendment)

201 KAR 5:030E. Annual courses of study required.

RELATES TO: KRS 218A.205(3)(h), 320.280

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 320.240(7), 320.280(2)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(2) requires all licensed optometrists to annually take courses of study in subjects relating to the practice of optometry. KRS 218A.205(3)(h) requires optometrists to obtain seven and one-half (7.5) percent of their continuing education credits in the use of the electronic monitoring system established pursuant to KRS 218A.202, pain management, or addiction disorders. This administrative regulation establishes the required hours of study and prescribes the approved programs and those records which shall be maintained and submitted showing proof of attendance at those programs.

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Section 1. (1) The annual course of study shall be completed each calendar year.

(2)(a) A licensee shall attend a minimum of eight (8) continuing education credit hours.

(b) In addition to the requirements of paragraph (a) of this subsection, an optometrist[;] who is authorized to prescribe therapeutic agents[;] shall attend a minimum of seven (7) credit hours in ocular therapy and pharmacology, for a total of at least fifteen (15) continuing education credits.

(c) In addition to the requirements of paragraph (a) and (b) of this subsection, an optometrist who is credentialed by the board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of at least twenty (20) continuing education credits.

(d) A licensee who is authorized to prescribe controlled substances shall obtain two (2) credit hours that relate to the use of the electronic monitoring system established in accordance with KRS 218A.202 known as Kentucky All Schedule Prescription Electronic Reporting (KASPER), pain management, or addiction disorders as part of the licensee's total continuing education credits.

Section 2. In order to be approved, an educational course shall be sponsored by a recognized and established state, regional (multistate) or national optometric association, an accredited college of optometry, or an accredited college of medicine.

Section 3. (1) In order to be credited for an educational course, a licensee shall submit an attendance form to the board.

(2) The attendance form shall be submitted on or before December 31 of each calendar year.

Section 4. A sponsor of an approved educational course shall~~meet the following requirements:~~

~~(1) He shall~~ furnish an attendance form to a licensee[;]

~~(2)~~ The attendance form shall contain the following information:

~~(1)(a)~~ Name of the sponsoring organization;

~~(2)(b)~~ Name and address of the licensee;

~~(3)(c)~~ Educational topics addressed at the course;

~~(4)(d)~~ Identity of the speakers;

~~(5)(e)~~ Number of hours attended by the licensee;

~~(6)(f)~~ Date of the program;

~~(7)(g)~~ Statement by the licensee that he or she has attended the course; and

~~(8)(h)~~ Signature of an official of the sponsoring organization.

Section 5. Credit shall not be given for more than two (2) hours attendance in a course of office management and administration.

Section 6. (1) Except as provided in subsection (2) of this section, credit may be granted for a maximum of five (5)[two (2)] hours continuing education through the Internet.

(2) The credit hours required by Section 1(2)(c) of this administrative regulation shall not be obtained through the Internet.

Section 7. Within one (1) year of initial licensure and thereafter every decennial year, an optometrist shall successfully complete a continuing education course of not less than one (1) hour concerning HIV/AIDS that complies with KRS 214.610(1) and is approved by the Cabinet for Health and Family Services, HIV/AIDS Branch.

JERALD COMBS, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the mandates of KRS 320.280, which requires optometrists to obtain continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes criteria for mandated continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation qualifies how many hours and what subject matter must be completed by optometrists.

(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 require optometrists who prescribe controlled substances to obtain two hours of continuing education in the use of KASPER, pain management, or addiction disorders. The amendment also clarifies the requirements for expanded therapeutic procedures and a maximum of five continuing education hours that may be acquired through the internet.

(b) The necessity of the amendment to this administrative regulation: HB1 requires a licensee to obtain a certain percentage of total continuing education in the use of KASPER, pain management, or addiction disorders.

(c) How the amendment conforms to the content of the authorizing statutes: HB1 requires a certain percentage of total continuing education hours to be in the use of KASPER, pain management, or addiction disorders. The amendment reduces the statutory mandate to a prescribed number of hours.

(d) How the amendment will assist in the effective administration of the statutes: Licensees will be clearly advised about the number of hours and subject matter of continuing education required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 415 optometrists are currently authorized to prescribe controlled substances and will need obtain two hours of continuing education in the use of KASPER, pain management, or addiction disorders;

(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: Optometrists have to receive eight hours of continuing education; an optometrist prescribing therapeutic agents must obtain fifteen hours of continuing education; an optometrist credentialed by the Board to perform expanded therapeutic procedures shall obtain twenty hours of continuing education. Optometrists prescribing controlled substances must have two hours of particularized education as part of their total continuing education hours.

(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 additional monetary cost to the entities identified in question (3) because the amendment does not require an addition to the continuing education normally obtained.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater education.

(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 Board.

(b) On a continuing basis: No new costs will be incurred by the Board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Primarily, license application and renewal fees fund the work of the Board. The Board is self sustaining and receives no general fund appropriations.

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

of this regulation is not dependent on an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees who are authorized to prescribe controlled substances.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.280 and HB1 require the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 5:130E

This emergency administrative regulation is being promulgated to comply with 2012 (Extra. Sess.) Ky. Acts. Ch. 1 (2012 SS HB 1). 2012 SS HB 1 requires that the board establish by administrative regulation: requirements for processing complaints, temporary suspension power, procedures for investigation of improper, inappropriate, or illegal dispensing of controlled substances, and penalties associated with the improper, inappropriate, or illegal dispensing of controlled substances. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of 2012 (Extra. Sess.) Ky. Acts. Ch. 1 on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. 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
JERALD F. COMBS, President

GENERAL GOVERNMENT CABINET Kentucky Board of Optometric Examiners (New Emergency Administrative Regulation)

201 KAR 5:130E. Controlled substances.

RELATES TO: KRS 218A.205(3)

STATUTORY AUTHORITY: KRS 218A.205(3)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3) requires the board to promulgate administrative regulations on: prescribing standards for controlled substances; a procedure to temporarily suspend, limit, or restrict a license if unrestricted practice poses a danger to the health, welfare, or safety of patients or the public; a procedure for the expedited review of complaints pertaining to controlled substances; and penalties for convictions of offenses related to controlled substances. This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

Section 1. Prescribing Standards. (1) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall:

(a) Have a current and valid DEA number;

(b) Register with Kentucky All Schedule Prescription Electronic Reporting (KASPER);

(c) Prescribe controlled substances only for the treatment or relief of pain for a condition of the eye and its appendages;

(d) Prescribe only Schedule III, IV, or V controlled substances;

(e) Prescribe controlled substances for a quantity therapeutically sufficient, up to seventy-two (72) hours;

(f) Examine the patient face-to-face and in-person prior to prescribing a controlled substance;

(g) Verify the fact that the patient that is prescribed a controlled substance is who the patient claims to be;

(h) Establish a documented diagnosis through the use of accepted medical practices; and

(i) Keep accurate, readily accessible medical records which shall include:

1. History and eye examination;

2. Diagnostic, therapeutic, and laboratory results;

3. Evaluations and consultations;

4. Treatment objectives;

5. Discussions of risk, benefits, and limitations of treatments;

6. Treatments;

7. Medication including date, type, dosage, and quantity prescribed; and

8. Instructions and agreements.

(2) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall not:

(a) Dispense any controlled substances;

(b) Write a prescription for a controlled substance that is refillable; and

(c) Prescribe:

1. With the intent or knowledge that a medication will be used, or is likely to be used, for other than a medicinal or an accepted therapeutic purpose; or

2. With the intent to evade any law with respect to sale, use, or disposition of the medication.

Section 2. Temporary Suspension, Limit, or Restriction of License. (1) The board may, without benefit of a hearing, temporarily suspend, limit, or restrict the license of an optometrist authorized to prescribe controlled substances if the board finds on the basis of reasonable evidence that the licensee has violated a statute or administrative regulation the board is empowered to enforce, and continued unrestricted practice by the licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public.

(2) The temporary suspension, limit, or restriction of a license shall take effect upon receipt by the licensee of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the temporary suspension, limit, or restriction order issues, the board shall schedule a disciplinary

nary hearing to be held in accordance with the provisions of KRS Chapter 13B within ten (10) days.

Section 3. Complaints. (1) The board shall consider all written complaints and sufficient anonymous complaints pertaining to the improper, inappropriate, or illegal prescribing of controlled substances. An anonymous complaint shall be considered sufficient if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(2) Upon receipt of a complaint pertaining to the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

(a) Send a copy of the complaint to the Office of the Attorney General, the Department of the Kentucky State Police, and the Cabinet for Health and Family Services within three (3) business days;

(b) Commence an investigation within seven (7) business days of the complaint; and

(c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

Section 4. Penalties. (1) Pursuant to the provisions of KRS 218A.205(3):

(a) A licensee convicted of a felony offense related to prescribing a controlled substance shall, at a minimum, have a lifetime revocation on prescribing any and all controlled substances;

(b) The board shall impose restrictions short of a permanent ban from prescribing controlled substances on a licensee convicted of a misdemeanor offense related to the prescribing of controlled substances. A licensee who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; and

(c) A licensee disciplined by a licensing board of another state related to the improper, inappropriate, or illegal prescribing of controlled substances shall, at a minimum, have the same disciplinary action imposed by the licensing board of the other state.

(2) A licensee who is authorized to prescribe controlled substances shall be subject to discipline by the board if:

(a) A licensee who is required to register for an account with KASPER fails to do so or does not maintain continuous registration during the licensee's term of licensure; or

(b) A licensee or applicant fails to report to the board, within thirty (30) days of the action:

1. Any conviction involving controlled substances; or

2. Disciplinary action taken by another licensure board involving controlled substances.

(3) Pursuant to the provisions of KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

JERALD COMBS, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone 859-246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards, an emergency suspension provision, a complaint process, and penalties with respect to an

optometrist who has been convicted of an offense involving controlled substances.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the mandates of HB1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes procedures mandated by HB1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: HB1 requires the Board to promulgate specific administrative regulations which will aid in detecting and curtailing abuse of controlled substances that are prescribed or dispensed.

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

(a) How the amendment will change this existing administrative regulation: Not applicable since this is a new regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since 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: The board anticipates that approximately 415 optometrists will be authorized to prescribe controlled substances and subject to the requirements of this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All licensees that prescribe controlled substances will be subject to the standards enumerated in the administrative regulation. Complaints involving controlled substances shall be reported to other agencies, investigated within 7 days of receipt, and charging decisions shall be forthcoming within 120 days, unless appropriately continued. The Board shall have the power to temporarily suspend licenses when continued practice poses a threat of harm to the public. Licensees will have to disclose violations of controlled substance laws or risk discipline. Certain violations of law will carry specific consequences (e.g. lifetime ban on prescribing if a licensee is convicted of a felony controlled substance prescribing offense).

(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 monetary cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will alleviate the threat of discipline by the Board.

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

(a) Initially: The cost of investigations, meeting dates, and hearings will be incurred by the Board. While the costs are impossible to accurately predict, the Board estimates an additional expense of \$10,000 annually.

(b) On a continuing basis: While the costs are impossible to accurately predict, the Board estimates an additional expense of \$10,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Primarily, license application and renewal fees fund the work of the Board. The Board is self sustaining and receives no general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this new administrative regulation is not dependent on an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees who are authorized to prescribe controlled substances.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB1 requires the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board anticipates an annual expenditure of \$10,000 and no revenue for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The Board estimates it will cost \$10,000 annually to meet, investigate complaints, and conduct hearings.

(d) How much will it cost to administer this program for subsequent years? The Board estimates it will cost \$10,000 annually to meet, investigate complaints, and conduct hearings.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 8:532E

The passage of 2012 Kentucky Acts Chapter 1 during the extraordinary session of the Kentucky General Assembly in 2012 makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes minimal requirements for documentation as related to the prescription writing practices of dentists licensed in the Commonwealth by the Kentucky Board of Dentistry. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, address the catastrophic plague of prescription drug abuse, and to protect the public, all of which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 20, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
ADAM K RICH, DMD, President

GENERAL GOVERNMENT CABINET Board of Dentistry (Emergency Amendment)

201 KAR 8:532E. Licensure of dentists.

RELATES TO: KRS 39A.350 - 366, 214.615, 304.040 - 075, 313.010(9), 313.030, 313.035, 313.080, 313.130, 313.245, 2012

Extra. Sess. Ky. Acts ch. 1

STATUTORY AUTHORITY: KRS 214.615(2), 313.020(2), 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254, 2012 Extra. Sess. Ky. Acts ch. 1

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 and 2012 Extra. Sess. Ky. Acts ch. 1 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

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

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

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

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

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

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

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

(8) Submit to a nation-wide criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police ~~from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint~~;

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

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

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

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

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

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

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

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

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

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

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

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

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

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

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

lumbia; or

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

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

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

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

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

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

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

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

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into a program and the expected date of completion;

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

(d) Submit an official final transcript of the applicant's dental coursework with degree posted.

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

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

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

(5) Nothing in this section shall prohibit:

(a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;

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

(c) A volunteer health practitioner from providing services under KRS 39A.350-366.

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

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

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

(c) Submit a signed Statement Regarding Faculty Licensure

Limitations; and

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

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

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

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

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

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

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

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

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

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

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

(h) Submit to a criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police~~from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint~~;

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

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

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

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

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

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

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

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

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

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

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

(b) Submit a completed, signed, and notarized Application for Charitable Dental Licensure with an attached applicant photo taken within the past six (6) months;

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

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

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

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.010(9) which shall be completed within the duration of the charitable event;

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

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

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

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

(g) A dentist licensed under this section shall not be allowed to prescribe any medications while practicing in the Commonwealth.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010 shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

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

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

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

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

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

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

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

(c) Competence to diagnose oral pathology;

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

(e) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

(g) Knowledge of subjects pertinent to patient management,

safety, and oral healthcare;

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

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

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

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

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

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

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

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

(b) The name of the licensee in attendance;

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

(d) The date of attendance or completion;

(e) The number of hours earned; and

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

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

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

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

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

(a) Submit a completed and signed, signed, and notarized Application for Renewal of Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

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

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

(e) Obtain at least one and one-half (1.5) hours of continuing education in the use of the Kentucky All Schedule Prescription Electronic Reporting System, pain management, or addiction disorders per year or a total of three (3) hours in a two (2) year renewal cycle; and

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

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

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

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

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

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

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

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

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

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

(a) Submit a completed, signed, and notarized Application to Reinstate a Dental License with an attached applicant photo taken within the past six (6) months;

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

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association;

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

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

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

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

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

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

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

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Licensure", January 2011;

(b) "Statement Regarding Student Licensure Limitations", July 2010;

(c) "Statement Regarding Faculty Licensure Limitations", July 2010;

(d) "Application for Charitable Dental Licensure," July 2010;

(e) "Application for Specialty Licensure", July 2010;

(f) "Application for Renewal of Dental Licensure", January 2011;

(g) "Retirement of License Form", July 2010;

(h) "Application to Reinstate a Dental License", July 2010;

(i) "Verification of Licensure or Registration Form", July 2010;

(j) "Duplicate License or Registration Form", July 2010; and

(k) "American Heart Association CPR Guidelines", 2010.

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

DR. ADAM K RICH, DMD, Board President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 4 p.m.

CONTACT PERSON: David J. Beyer, Interim Executive Director and General Counsel, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David J. Beyer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dentists as mandated by KRS 313.035 and 2012 Kentucky Acts Ch. 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.035 and 2012 Kentucky Acts Ch. 1, which requires the board to promulgate administrative regulations regarding the licensure of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by KRS 313.035 and 2012 Kentucky Acts Ch. 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the procedure for the licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by KRS 313.035 and 2012 Kentucky Acts Ch. 1.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow for compliance with the requirements for 2012 Kentucky Acts Ch. 1.

(b) The necessity of the amendment to this administrative regulation: To insure the board and the profession meet the mandates of 2012 Kentucky Acts Ch. 1.

(c) How the amendment conforms to the content of the authorizing statute: The amendment sets the standard of a nationwide criminal background check buy either the Federal Bureau of Investigation of the Department of the Kentucky State Police.

(d) How the amendment will assist in the effective administration of the statutes: The amendment sets the standard of a nationwide criminal background check buy either the Federal Bureau of Investigation of the Department of the Kentucky State Police.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 3119 currently licensed dentists and approximately 125 new applicants per year. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by KRS 313.035 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

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

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self-funded agency and the requirements of this regulation will be absorbed into the agency's general budget from the 2012 regulation session of the Kentucky General Assembly

(a) Initially: No additional costs are expected.

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

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

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

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

(9) TIERING: Is tiering applied? This administrative regulation applies tiering by identifying each classification of licensure available to dentists in the Commonwealth of Kentucky. General dental licenses are the standard, full license type available, and applicants are therefore subject to the full complement of requirements. Reporting requirements are reduced for student, faculty, and charitable limited license applicants as they are subject to restrictions of practice. Specialty license holders are subject to additional reporting requirements as they hold a more advanced license than general dentists.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313 and 2012 Kentucky Acts Ch. 1

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal effect on the Kentucky Board of Dentistry as the agency is a fully self-funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in 2012 Kentucky Acts Ch. 1 of the 2012 Extraordinary Session of the General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in 2012 Kentucky Acts Ch. 1 of the 2012 Extraordinary Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? There will be no new cost for the agency.

(d) How much will it cost to administer this program for subsequent years? All cost related to this program will be absorbed in the agency's general budget.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 8:540E

The passage of 2012 Kentucky Acts Chapter 1 during the extraordinary session of the Kentucky General Assembly in 2012 makes necessary the immediate change of administrative regulations concerning the practice of dentistry; this emergency administrative regulation establishes minimal requirements for documentation as related to the prescription writing practices of dentist licensed in the Commonwealth by the Kentucky Board of Dentistry. This emergency administrative regulation must be placed into effect immediately in order for the board to regulate the practice of dentistry, address the substantial problem of prescription drug abuse, and to protect the public, all of which is its statutory charge. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 25, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

DR. ADAM K. RICH, DMD, President

GENERAL GOVERNMENT CABINET Board of Dentistry (Emergency Amendment)

201 KAR 8:540E. Dental practices and prescription writing.

RELATES TO: KRS 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note, 2012 Extra. Sess. Ky. Acts ch. 1

STATUTORY AUTHORITY: KRS 313.060(1), 2012 Extra. Sess. Ky. Acts ch. 1

EFFECTIVE: July 25, 2012

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures, and KRS 313.060(1) requires the board to promulgate administrative regulations relating to dental practices that shall include minimal requirements for documentation and Centers for Disease Control compliance. This administrative regulation establishes requirements for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures and includes minimal requirements for documentation and Centers for Disease Control compliance.

Section 1. Definitions[Definition]. (1) "Invasive procedure" means a procedure that penetrates hard or soft tissue.

(2) "Oral surgery" means any manipulation or cutting of hard or soft tissues of the oral or maxillofacial area and associated procedures, by any means, as defined by the American Dental Association, utilized by a dentist licensed by this chapter and within their scope of training and practice.

Section 2. Minimum Documentation Standards for all Dental Patients. (1) Each patient's dental records shall be kept by the

dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth (18) birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) The dentist shall keep accurate, readily accessible, and complete records which include:~~[Each patient record for a dental patient in the Commonwealth of Kentucky shall include at a minimum:]~~

(a) The patient's name;

(b) The patient's date of birth;

(c) The patient's medical history and documentation of the physical exam of the oral and perioral tissues;

(d) The date of treatment;

(e) The tooth number, surfaces, or areas to be treated;

(f) The material used in treatment;

(g) Local or general anesthetic used, the type, and the amount;

(h) Sleep or sedation dentistry medications used, the type, and the amount; ~~[and]~~

(i) Diagnostic, therapeutic, and laboratory results if any;

(j) The findings and recommendations of and evaluations and consultations if any;

(k) Treatment objectives;

(l) All medications, including date, type, dosage, and quantity prescribed or dispensed; and

(m) Any post treatment instructions.~~[A complete list of prescriptions provided to the patient, the amount given, and the number of refills indicated.]~~

Section 3. Prescription Writing Privileges. (1) Pursuant to KRS 313.035 a dentist licensed under this chapter may prescribe any drug necessary within the scope of their practice with the following conditions, provided the dentist:

(a) Is licensed pursuant to 201 KAR 8:532;

(b) Has obtained a license from the Drug Enforcement Administration;

(c) Has enrolled with and utilizes the Kentucky All-Scheduled Prescription Electronic Reporting System as required by 2012 Extra. Sess. Ky. Acts ch. 1 and Section 2(4)(b) of this administrative regulation.

(2) A dentist may not compound any scheduled drugs or dispense any Schedule I, Schedule II, or Schedule III controlled substances containing hydrocodone for use by the patient outside the office setting.

Section 4. Prescribing of Controlled Substances by Dentist. (1) Prior to the initial prescribing of any controlled substance, each dentist shall:

(a) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record and consider the available information to determine whether it is medically appropriate and safe to prescribe a controlled substances. This requirement to obtain and review a KASPER report shall not apply to:

1. A dentist who prescribes a Schedule III or one (1) of the Schedule IV controlled substances listed in subparagraph 2. of this paragraph after the performance of oral surgery provided no more than a seventy-two (72) hour supply of such controlled substance is prescribed;

2. A dentist prescribing or dispensing Schedule IV or V controlled substances other than those listed in this specific subparagraph. The dentist shall obtain and review a KASPER report before initially prescribing any of the following Schedule IV controlled substances:

a. Ambien;

b. Anorexics;

c. Ativan;

d. Klonopin;

e. Librium;

f. Nubain;

g. Oxazepam;

h. Phentermine;

i. Soma;

j. Stadol;

k. Stadol NS;

l. Tramadol;

m. Versed; and

n. Xanax; or

3. Pre-appointment medication for the treatment of procedure anxiety provided the prescription is limited to a two (2) day supply and has no refills;

(b) Obtain a complete medical history and conduct a physical examination of the oral or maxillofacial area of the patient and document the information in the patient's medical record;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(e) Obtain written consent for the treatment.

(2) A dentist may provide one (1) refill within thirty (30) days of the initial prescription for the same controlled substance for the same amount or less or prescribe a lower schedule drug for the same amount without a clinical reevaluation of the patient by the dentist.

(3) A patient who requires additional prescriptions for a controlled substance shall be clinically reevaluated by the dentist and the all provisions of this section followed.

Section 5. Penalties and Investigations. (1) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee convicted of a felony offense related to prescribing and dispensing of a controlled substance shall, at a minimum, have a life-time revocation of any and all scheduled drug prescribing privileges.

(2) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee convicted of a misdemeanor offense relating to the prescribing of a controlled substance shall, at a minimum, have a five (5) year revocation of any and all scheduled drug prescribing privileges.

(3) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee disciplined by a licensing board of another state relating to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall, at a minimum, have the same disciplinary action imposed by this state or the disciplinary action prescribed in subsection (1) or (2) of this section, whichever is greater.

(4) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee who is disciplined in another state or territory who holds a Kentucky license and fails to notify the board in writing of the disciplinary action within thirty (30) days of the finalization of the action shall be subject to not less than a \$1000 fine.

(5) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee who fails to register for an account with the Kentucky All Scheduled Prescription Electronic Reporting System or who fails to meet the requirements of Section 4 of this administrative regulation shall receive a private admonishment from the board and be given no more than thirty (30) days to become compliant after which time the dentist shall be subject to no less than a \$500 fine.

(6) The Law Enforcement Committee of the Board shall produce a charging decision on the complaint within 120 days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 6[3]. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the ~~standard~~[universal] precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, super-

vision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same ~~standard~~^[universal] precautions.

(2) The board or its designee shall perform an infection control inspection of a dental practice utilizing the Infection Control Inspection Checklist.

(3) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board. The dentist may receive a second inspection after the thirty (30) days have passed. If the dentist fails the second inspection he or she shall be immediately temporarily suspended pursuant to KRS 313.085 until proof of compliance is provided to the board and he or she shall pay the fine as prescribed in 201 KAR 8:520.

(4) Any licensed dentist, licensed dental hygienist, registered dental assistant, or dental assistant in training for registration who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 7[4]. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

- (1) Provide written notice to the patient of the termination;
- (2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and
- (3) Retain a copy of the letter of termination in the patient records.

Section 8[5]. ~~Incorporation~~^[Incorporated] by Reference. (1) The following material is incorporated by reference:

- (a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and
 - (b) "Infection Control Inspection Checklist", July 2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

DR. ADAM K RICH DMD, Board President

APPROVED BY AGENCY: July 24, 2012

FILED WITH LRC: July 25, 2012 at 10 a.m.

CONTACT PERSON: David J. Beyer, Interim Executive Director and General Counsel, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. phone (502) 429-7280, fax (502) 429-7282, email David.Beyer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David J. Beyer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, the writing of prescriptions, penalties for violations, infection control, and termination of the doctor patient relationship as required by KRS 313 and 2012 Ky Acts Ch. 1 of the 2012 Special Session

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2012 Ky. Acts Ch. 1, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, the writing of prescriptions, penalties for violations, infection control, and other parts of the dental practice.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2012 Ky. Acts Ch. 1, which requires the board to promulgate administrative regulations regarding the requirements

for documentation in a patient record, the writing of prescriptions, penalties for violations, infection control, and other parts of the dental practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement 2012 Ky. Acts Ch.1, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, the writing of prescriptions, penalties for violations, infection control, and other parts of the dental practice.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the board into compliance with the requirements with 2012 Kentucky Acts Ch. 1.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the board into compliance with the requirements with 2012 Kentucky Acts Ch. 1.

(c) How the amendment conforms to the content of the authorizing statute: The amendment brings the board into compliance with the requirements of 2012 Kentucky Acts Ch. 1.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the necessary requirements for prescription writing as mandated by 2012 Kentucky Acts Ch. 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 3,119 dentist currently licensed by the board as well as any new dentist licensed by the board in the future. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation places into effect the provisions of 2012 Kentucky Acts Ch.1 which requires all licensed dentist who prescribe controlled substances to register with the KASPER program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees who do not currently operate a computer in their office setting will have to purchase a computer system to effectively run and document their participation in the KASPER program.

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

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self-funded agency whose budget was approved in regular session of the 2012 General Assembly.

(a) Initially: No additional costs are expected.

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

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

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

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

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

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313 and 2012 Ky Acts Ch. 1

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in 2012 Kentucky ACTS CH. 1.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in 2012 Kentucky ACTS CH. 1.

(c) How much will it cost to administer this program for the first year? The cost of this program is allocated within the monies of the agency as allotted in the budget bill passes in the regular session of the Kentucky General Assembly for 2012.

(d) How much will it cost to administer this program for subsequent years? The continued administration will be absorbed into the self-supported budget of the Board of Dentistry.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 9:001E

This emergency administrative regulation establishes required definitions used in KRS 218A.172. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish definitions used in KRS 218A.172, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor
PRESTON P. NUNNELLEY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Emergency Administrative Regulation)

201 KAR 9:001E. Definitions for terms used in KRS 218A.172.

RELATES TO: KRS 218A.172, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. This administrative

regulation establishes the definitions for terms used in KRS 218A.172.

Section 1. Definitions. The following terms used in KRS 218A.172 are defined in the following manner:

(1) "Query the electronic monitoring system" means, in the setting of a licensed hospital, long term care facility or surgical center:

(a) The admitting physician, admitting the patient for observation, inpatient or outpatient purposes, obtaining and reviewing the KASPER immediately prior or promptly after the patient's admission to the hospital;

(b) The admitting physician placing the KASPER report into the patient chart for use by all practitioners in the hospital for that patient during that specific admission;

(c) Each practitioner reviewing the KASPER report in the patient chart before prescribing controlled substances during the course of that specific admission; and

(d) The discharging practitioner reviewing the KASPER report in the patient chart before prescribing controlled substances for up to seventy-two (72) hours upon the patient's discharge from the hospital.

(2) "During surgery" means the seventy-two (72) hour period immediately following surgery if the controlled substance is prescribed or the forty-eight (48) hour period immediately following surgery if the controlled substance is dispensed for the treatment of pain resulting from the surgery, whether the surgery is performed on an inpatient or outpatient basis.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for terms used in KRS 218A.172.

(b) The necessity of this administrative regulation: It is necessary to establish the definitions for terms used in KRS 218A.172.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the definitions for terms used in KRS 218A.172.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the definitions for terms used in KRS 218A.172.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect all physicians licensed in the Commonwealth of Kentucky that prescribe controlled substances.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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

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regulation or amendment: Physicians will not have to take any required action to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Board of Medical Licensure will not charge a fee for compliance with regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will have definitions for the terms used in KRS 218A.172.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.172.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

201 KAR 9:081E

This emergency administrative regulation establishes the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements for physicians holding a license to practice medicine or osteopathy in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements for physicians in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrent-

ly filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
PRESTON P. NUNNELLEY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (Emergency Amendment)

201 KAR 9:081E. Disciplinary proceedings.

RELATES TO: 218A.205, KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate regulations to regulate the conduct of licensees. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses~~empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the administrative regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto~~. The purpose of this administrative regulation is to set forth the procedures to be followed in handling formal and informal disciplinary proceedings before the board ~~[or before any committee to the board]~~, such that the proceedings will be conducted with due regard for the rights and privileges of all affected parties.

Section 1. Definitions. (1) "Executive director" means the executive director of the board or any assistant executive directors appointed by the board.

(2) "General counsel" means the general counsel of the board or any assistant general counsel appointed by the board.

(3) "Board" means the Kentucky Board of Medical Licensure or its inquiry or hearing panels.

(4) "Grievance" means any allegation in whatever form alleging misconduct by a physician.

(5) "Charge" means a specific allegation contained in any document issued by the board or its inquiry or hearing panels alleging a violation of a specified provision of the Kentucky Medical and Osteopathic Practice Act.

(6) "Complaint" means a formal administrative pleading authorized by the inquiry panel that sets forth charges against a physician and commences a formal disciplinary proceeding.

(7) "Show cause order" means an order directing the named physician to show cause why the board should or should not take a specified action based on specified information which the order alleges to be true.

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

(10) "Act" means the Kentucky Medical and Osteopathic Practice Act.

Section 2. Reception of Grievances; Investigations. (1) Grievances may be submitted by any individual, organization or entity. The board shall retain a written form upon which grievances may be made and any party submitting a grievance may be required to complete the form and required to include the party's name and address unless the grievance is submitted anonymously. Board members or employees may initiate a grievance simply by providing a written memorandum to the executive director. If the board receives an anonymous grievance, an investigation will only be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious. [and may also be required to give their affidavit acknowledging the truth and veracity to the best of

their knowledge and belief of the information contained in the grievance.]

(2) The board shall initiate each investigation pertaining to prescribing or dispensing of controlled substances within seventy-two (72) hours of the date of receipt of the grievance. All grievances shall be investigated as necessary and as promptly as possible, and presented to the inquiry panel for review. Investigations pertaining to prescribing or dispensing of controlled substances shall be presented to the inquiry panel within 120 days of the date of receipt of the grievance unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel. The executive director may hold an investigation pertaining to prescribing or dispensing of controlled substances in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency. In each instance when an investigation pertaining to prescribing or dispensing of controlled substances is not presented to the inquiry panel within 120 days of the date of receipt of the grievance, the investigative report will plainly state the circumstances of that particular grievance or investigation that made timely presentation to the inquiry panel impossible. The inquiry panel and executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations. The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter. The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the inquiry panel when requested shall be considered unprofessional conduct in violation of KRS 311.595(9).

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605-311.606 and may pursue investigations, on its own initiative, in regard to acts of noncompliance or any other perceived violation of the Act.

Section 3. Reports and Recommendations; Petitions. (1) When in the opinion of the inquiry panel a grievance warrants the issuance of a complaint against a physician, the inquiry panel shall cause a complaint to be prepared.

(2) When in the opinion of the executive director a grievance warrants the issuance of a complaint against a physician and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the executive director shall cause a complaint to be prepared.

(3) When in the opinion of the executive director or the inquiry panel a disciplinary matter warrants the issuance of a show cause order against a physician, the executive director or the inquiry panel shall cause a proposed order to be prepared.

(4) The board, on its own initiative, may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining, or reobtaining licensure.

(5) Nothing in this subsection shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.

Section 4. Complaints. (1) The complaint shall be signed and dated. The complaint shall be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and shall be designated with an appropriate case number.

(2) The complaint shall set forth the board's jurisdiction in regard to the subject matter of the complaint and shall further set forth, in numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 5. Show Cause Orders. (1) The show cause order shall be signed by an officer of the board and shall be dated. The show cause order shall be styled in regard to the license, application for license or application for renewal, registration or reregistration of license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and shall be designated with an appropriate order number.

(2) The show cause order shall set forth the board's jurisdiction in regard to the subject matter of the order and shall further set forth, in numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license.

(3) The show cause order shall direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint the inquiry panel shall issue an order directing the charged physician to respond within thirty (30) days after receiving notice of the complaint, and informing the physician that failure to respond may be taken by the board as an admission of the charges. ~~[Section 7. Orders of Temporary Restriction. An order temporarily suspending, limiting or restricting the license held by the named physician shall set forth the grounds which the inquiry panel believes support a finding that sufficient reasonable cause exists to believe that the continued unaffected practice by the named physician would constitute a danger to the health, welfare and safety of the physician's patients or of the general public.]~~

Section 7.[8.] Notice and Service of Process. (1) Any notice required by the Act or this administrative regulation shall be in writing, dated and signed by the appropriate person.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail to the physician's last known address of which the board has record or by such service on the named physician's attorney of record. Failure of the named physician to receive actual notice after execution of the prescribed service shall not prejudice the board from pursuing proceedings that result in the denial or discipline of the named physician's license. ~~[Section 9. Hearings Pursuant to Order Temporarily Suspending, Limiting or Restricting a License. (1) A physician whose license has been temporarily suspended, limited or restricted shall, upon written request, be accorded hearing on the board's order.~~

~~(2) Any findings of fact or conclusions of law rendered by the hearing officer pursuant to a hearing on an order of temporary discipline shall not be binding upon the hearing panel in its ultimate determination regarding the charges contained in the complaint, nor shall the hearing officer thereafter be prejudiced from presiding at the hearing on the complaint.~~

~~(3) At the hearing on the order of temporary discipline, the hearing officer may entertain any motion timely submitted in regard to any matter concerning the disciplinary case, provided, however, that any orders issued pursuant to such motions shall not be considered appealable.~~

~~(4) Either party to the hearing on the order of temporary discipline may petition the hearing panel to review the order of the hearing officer either sustaining, modifying or withdrawing the inquiry panel's order by filing a written petition delineating those aspects of the hearing officer's determination with which the party takes exception and requesting the hearing panel to review the hearing officer's determination. The hearing panel may grant or deny review in its discretion.~~

~~(5) Nothing in this section shall be construed to limit either party's right to appeal an order sustaining, modifying or withdrawing an order of temporary discipline to the circuit court of the county in which the board's offices are located as provided by statute. However, the filing of an appeal shall not prejudice the board's jurisdiction to continue the proceeding in regard to the charges contained in the complaint.]~~

Section 8.[10.] Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer who is empowered to preside at any and all proceedings, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law and to perform any other act necessary to the proper conduct of the proceedings.

(2) Appointment of the prosecuting attorney. The board's general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, provided, however, that the board may

appoint special prosecuting attorneys in its discretion. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline.

(4) Form of pleadings; service. Pleadings may be in any neat form provided that all pleadings must be dated and signed by the offering party. The original of all pleadings must be filed with the executive director for entry into the official record and copies must be served on the hearing officer, the opposing party and any other person who might be designated by the hearing officer.

(5) Prehearing conferences. Upon motion of either party or upon his or her own initiative, the hearing officer may order that a prehearing conference be held. The prehearing conference may be the forum for consideration of any matter properly before the hearing officer including all motions, discovery, stipulations, identification of issues, dates of future proceedings and objections.

(6) Discovery. Either party may at any time after the issuance of a complaint or show cause order move the hearing officer to order that discovery from the other party be allowed by any of the following methods:

(a) Oral deposition, provided, however, that either party shall have the right to move the hearing officer to order that the deposition be entered into the record in lieu of further testimony by the witness;

(b) Request for a more definite statement;

(c) Request for production of names of witnesses, documents and other demonstrative evidence; and

(d) Request for a brief synopsis of the testimony expected to be given by any expert witness.

The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

(7) Hearings. Hearings shall proceed in accordance with the rules of examination applicable in courts of law in the Commonwealth. The rules of evidence applicable in courts of law in the Commonwealth shall apply, provided, however, that hearsay evidence shall be admissible unless irrelevant or grossly prejudicial. The order and burden of proof shall be established by the hearing officer, provided, however, that the burden of proof shall be upon the charged physician in any hearing on the charges contained in a show cause order. The hearing officer shall rule upon any motions or objections and may require the submission of briefs in regard to any issue. The hearing officer may allow opening and closing statements by either party, or other offers of prosecution or defense that will allow the orderly and expeditious conduct of the proceedings.

(8) Record. The hearing officer shall be charged with the responsibility of compiling a written record of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings and other legal documents which the hearing officer deems properly part of the record.

(9) Presentation of record, hearing officer's proposed findings, conclusions and recommendations. The hearing officer shall present the record, his or her proposed findings of fact, conclusions of law and recommendations to the executive director for deliberation by the hearing panel. The hearing officer shall serve a copy of his findings, conclusions and recommendations on all parties at least twenty (20) days prior to the date set for the hearing panel's final determination. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions and recommendations ten (10) days prior to the date set for the hearing panel's final determination.

(10) Briefs. Any party to the proceeding may move the hearing officer to allow briefs to be filed with the hearing panel prior to the hearing panel's final determination. The hearing officer may grant the motion and establish a briefing schedule but only if the hearing officer believes that such a procedure would substantially aid the hearing panel in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise allowed by the hearing officer. The hearing panel may, on its own initiative, order that briefs be

submitted.

(11) Oral argument. Any party to the proceeding may move the hearing panel to allow oral argument prior to the hearing panel's final determination. The hearing panel may order oral arguments on its own initiative.

(12) Board's findings of fact, conclusions of law and final order, remand. At the conclusion of its deliberations the hearing panel may adopt the hearing officer's proposed findings, conclusions and recommendations of action in whole or in part or may reject them totally and prepare its own. The hearing panel shall enter a final order dated and signed by an officer of the hearing panel stating its ultimate determination. Prior to, during or subsequent to any deliberations the hearing panel may remand the matter to the hearing officer for further proceedings as directed.

Section 9. Meetings of the Board and Panels. (1) The full membership of the Board shall meet quarterly each calendar year, in the months of March, June, September, and December. At such meetings, the board will make licensing decisions regarding initial applications for licensure, make decisions regarding recommendations made by its various statutory committees, determine whether to enter into contractual relationships, and address issues of general policy or interpretation of statute.

(2) The members of Inquiry Panel A shall meet bimonthly each calendar year, in the months of February, April, June, August, October, and December. At its February, April, August, and October meetings, Inquiry Panel A will finally resolve cases in which a hearing has been conducted or a negotiated settlement tendered, will determine whether to grant requests to modify or terminate previously accepted negotiated settlements, will determine appropriate action upon recently completed investigations, and will make licensing decisions regarding renewal applications. At its June and December meetings, which coincide with the meeting of the full Board, Inquiry Panel A will take appropriate action upon recently completed investigations of prescribing or dispensing of controlled substances and other matters that require immediate attention.

(3) The members of Inquiry Panel B shall meet bimonthly each calendar year, in the months of January, March, May, July, September, and November. At its January, May, July, and November meetings, Inquiry Panel B will finally resolve cases in which a hearing has been conducted or a negotiated settlement tendered, will determine whether to grant requests to modify or terminate previously accepted negotiated settlements, will determine appropriate action upon recently completed investigations, and will make licensing decisions regarding renewal applications. At its March and September meetings, which coincide with the meeting of the full board, Inquiry Panel B will take appropriate action upon recently completed investigations of prescribing or dispensing of controlled substances and other matters that require immediate attention.

Section 10. Definitions. "A conviction relating to controlled substances" shall include any conviction or plea to criminal charges, regardless of adjudication, that is based upon or resulted from, in whole or part, allegations of conduct involving the improper, inappropriate or illegal use, possession, transfer, prescribing or dispensing of controlled substances. The underlying facts of the offense, rather than the title of the offense named in the plea or judgment of conviction, will be determinative of whether the conviction or plea was "relating to controlled substances".

Section 11. Mandatory Reporting; Mandatory Disciplinary Sanctions; Emergency Action; Expedited Proceedings. (1)(a) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon their initial application any criminal conviction they have sustained or any plea of guilt, plea of nolo contendere or Alford plea they have entered to criminal charges in any state, regardless of adjudication.

(b) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon their initial application any disciplinary action taken or sanction imposed upon their license to practice medicine or osteopathy in any state, to include surrendering or placing their license in an inactive or retirement status to resolve a pending investigation by the licensing authority.

(c) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon their initial application if they are currently under investigation by the licensing authority of any other state for possible violations of the licensing or regulatory statutes of that state.

(d) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting, the licensee shall provide a copy of the judgment of conviction or plea documents.

(e) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board within ten (10) days of receipt, notice of any disciplinary action taken or sanction imposed upon their license in any state, including surrendering their license or placing their license into inactive or retired status to resolve a pending licensing investigation. As part of this reporting requirement, the licensee shall provide a copy of the order issued by or entered into with the other licensing board.

(f) Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a) through (c) of this section, shall constitute a violation of KRS 311.595(9) and (12). Upon a finding by the board that the applicant committed such violation, the appropriate panel shall impose a fine of \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this administrative regulation. In addition to these minimum mandatory sanctions, the panel may impose any additional sanction authorized by KRS 311.595, including denial of the application or revocation of the license previously issued based upon the incomplete information.

(g) Failure to report a criminal conviction or plea, or action taken by another licensing board as required of a licensee by paragraphs (d) and (e) of this subsection, shall constitute a violation of KRS 311.595(9) and (12). Upon a finding by the board that the licensee committed such violation, the appropriate panel shall impose a fine of \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this administrative regulation. In addition to these minimum mandatory sanctions, the panel may impose any additional sanction authorized by KRS 311.595 based upon all of the information available to the Panel at the time of action.

(2)(a) If an initial applicant reports that they are the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that initial application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

(b) If an initial applicant has been convicted of a felony offense or entered a plea of guilt, an Alford plea or a plea of nolo contendere to any felony charge relating to controlled substances, regardless of adjudication, in any state, the board may exercise its normal discretion to grant or deny the application, based upon all available facts. If the board should grant a license to such an initial applicant, the board shall, at a minimum, permanently ban the applicant from prescribing or dispensing controlled substances as an express condition of granting the license. If the board grants the license subject to a permanent ban, it may impose other conditions in addition to that permanent ban as express conditions of granting the license.

(c) If a licensee has been convicted of or entered a plea of guilt, an Alford plea or a plea of nolo contendere to any felony offense relating to controlled substances, regardless of adjudication in any state, the appropriate panel shall, at a minimum, permanently ban the licensee from prescribing or dispensing controlled substances as a disciplinary sanction. In addition to this minimum sanction, the panel may take any appropriate disciplinary action authorized by KRS 311.595 against the license, or in lieu of the minimum sanction, the panel may revoke the license, based upon the facts available to the panel at the time of action.

(3)(a) If an initial applicant has been convicted of a misdemeanor offense relating to controlled substances or entered a plea of guilt, an Alford plea or plea of nolo contendere to a misdemeanor charge relating to controlled substances, regardless of adjudica-

tion, in any state, the board may exercise its normal discretion to grant or deny the application, based upon all available information. If the Board should grant the application, the board shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license. If the board grants the license subject to a ban, it may impose other conditions in addition to that ban as express conditions of granting the license.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing controlled substances, regardless of adjudication in any state, the appropriate panel shall, at a minimum, ban the licensee from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as a disciplinary sanction. In addition to this minimum sanction, the panel may take any appropriate disciplinary action against the license, or in lieu of the minimum sanction, may revoke the license, based upon the facts available to the panel at the time of action.

(4)(a) If an initial applicant has surrendered their professional license or placed that license into an inactive or retired status to resolve a pending licensing investigation, the board shall not grant a license to that initial applicant, unless the licensing authority of that state has subsequently reissued or reinstated the license. If the licensing authority of the state has subsequently reissued or reinstated the license, the board may exercise its normal discretion in determining whether to grant or deny the application based upon the available facts.

(b) If an initial applicant has had a disciplinary action taken against or sanction imposed upon the applicant's license to practice medicine or osteopathy in any state, the board shall, at a minimum, impose the same substantive sanctions imposed by the other state as an express condition of granting the license, or may deny the application, or, in addition to the minimum sanction, impose additional sanctions as an express condition of granting the license, based upon the facts available at the time.

(c) If a licensee has had disciplinary action taken against or sanctions imposed upon their license to practice medicine or osteopathy in any state, the appropriate panel shall, at a minimum, impose the same substantive sanctions as disciplinary sanction against their Kentucky license. In addition to this minimum sanction, the panel may take any appropriate additional disciplinary action against the license, or in lieu of the minimum sanction, the panel may revoke the license, based upon the facts available to the panel at the time of action.

(5) Failure to report either a criminal conviction or plea, or disciplinary sanctions by another licensing board, as required by this section, shall constitute "a violation of law which constitutes an immediate danger to the public health, safety, or welfare," for purposes of KRS 311.592 and 13B.125. If the board or one (1) of its panels learns that a licensee has suffered a qualifying criminal conviction or disciplinary sanction and has failed to report it as required by this section, the panel or its chair may immediately issue an emergency order appropriately suspending or restricting the licensee in accordance with this section. If such an emergency order is issued and an emergency hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

(6) If the only violation charged in a complaint against the licensee is a criminal conviction or disciplinary sanction described in this section, and the conviction or disciplinary action may be proved by accompanying official certification, the board shall take appropriate steps to expedite the resolution of that complaint. Following receipt of the licensee's response to the complaint, board counsel shall promptly file a motion for summary disposition on the ground that no genuine issues of material fact are in dispute, pursuant to KRS 13B.090(2). The licensee shall not be permitted to re-litigate either the criminal conviction or disciplinary sanction; the only available defense is that the certification of the document is fraudulent. If the licensee has admitted the occurrence of the criminal conviction or disciplinary action in the response, no additional response is required or permitted to the motion for summary disposition.

sition. If the licensee has denied the occurrence of the criminal conviction or disciplinary sanction, and alleges that the certification is fraudulent, the licensee may file a response to the motion for summary resolution within twenty (20) days of receipt of the motion. Once the assigned hearing officer determines that no response is permitted or has received the written response within the time allotted or determines that a response was not filed within the allotted time, the hearing officer shall issue a ruling upon the motion as soon as possible but no later than thirty (30) days after the motion is submitted for decision. If the hearing officer issues a recommended order, the recommended order shall be presented to the board's Hearing Panel at its next meeting for resolution and imposition of the sanction required by this section.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for disciplinary proceedings, reception of grievances, meeting dates of the board and panels and mandatory reporting requirements.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the board and panels and mandatory reporting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

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

(a) How the amendment will change this existing administrative regulation; This amendment establishes requirements for investigating grievances regarding prescribing, establishes the schedule of board and panel meetings and sets out mandatory reporting requirements.

(b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of board and panel meetings and sets out mandatory reporting requirements.

(c) How the amendment conforms to the content of the authorizing statutes; This administrative regulation acts specifically to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of board and panel meetings and sets out mandatory reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of Board and Panel meetings and sets out mandatory reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Physicians will be required to report disciplinary sanctions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation is not expected to incur any additional cost to the physicians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will be able to assist in curbing the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 9:200E

This emergency administrative regulation establishes the requirements of obtaining and reporting information to the National Practitioner Data Bank. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish requirements of obtaining and reporting information to the National Practitioner Data Bank, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor
PRESTON P. NUNNELLEY, President

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Emergency Administrative Regulation)**

201 KAR 9:200E. National Practitioner Data Bank Reports.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a), (k)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 311.595(1)(k) authorizes the board to utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620. This administrative regulation establishes the requirements of obtaining and reporting information to the National Practitioner Data Bank.

Section 1. (1) The board shall obtain a report from the National Practitioner Data Bank, which includes all available information, on each applicant for initial licensing within the Commonwealth of Kentucky. The board shall not grant an initial license to practice medicine or osteopathy within the Commonwealth unless and until it has received and reviewed the National Practitioner Data Bank report for that applicant.

(2) The board shall promptly report each order issued by its panels, whether final order or agreed order, relating to a specific licensee to the National Practitioner Data Bank in accordance with rules and regulations published by the United States Department of Health and Human Services, Health Resources and Services Administration.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of obtaining and reporting information to the National Practitioner Data Bank.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to comply with the requirements of 218A.205.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements of obtaining and reporting information to the National Practitioner Data Bank.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements of obtaining and reporting information to the National Practitioner Data Bank.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This is a new administrative regulation that will affect new applicants along with approximately 15,500 physicians already licensed to practice medicine in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for initial licensure will be required to obtain the National Practitioner Data Bank report prior to being licensed to practice medicine or osteopathy in the Commonwealth of Kentucky. Current licensees will not be required to take any action to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of obtaining the National Practitioner Data Bank Report for initial applicants is \$16 payable directly to the National Practitioner Data Bank. There will be no cost to current licensees as the Board will report directly to the National Practitioner Data Bank.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be able to provide accurate information to the Board as required for licensure. Current licensees will have the benefit of accurate information being reported to the National Practitioner Data Bank.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), (k); 218A.205.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
201 KAR 9:210E**

This emergency administrative regulation establishes the requirements of criminal background checks for all new applicants obtaining a license to practice medicine or osteopathy in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish requirements of criminal background checks for all new applicants obtaining a license to practice medicine or osteopathy in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor
PRESTON P. NUNNELLEY, President

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Emergency Administrative Regulation)**

201 KAR 9:210E. Criminal background checks required for all new applicants.

RELATES TO: KRS 311.530-311.620, 311.990, 218A.205

STATUTORY AUTHORITY: KRS 311.565(1)(k), (t)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(t) authorizes the board to require a criminal background investigation of all persons applying for licensure at the time of initial application by means of a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation. This administrative regulation establishes the requirement for criminal background checks for all new applicants.

Section 1. The board shall require a criminal background investigation, by means of a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation, of all persons applying for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky. The board shall not grant an initial license to practice medicine or osteopathy within the Commonwealth until it has received and reviewed the criminal background investigations by both the Department of Kentucky State Police and the Federal Bureau of Investigation for that applicant.

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY: July 20, 2012
FILED WITH LRC: July 20, 2012 at 2 p.m.
CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310
Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone
(502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires criminal background checks for all new applicants.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to require criminal background checks for all new applicants to be conducted prior to receiving a license to practice medicine or osteopathy in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to require criminal background checks for all new applicants.

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

trative regulation acts specifically to require criminal background checks for all new applicants.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect approximately 1,000 applicants for initial licensure in the Commonwealth of Kentucky each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 be required to submit to a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will be required to send a check payable to the Kentucky State Treasurer in the amount of \$36.50 to the Department of the Kentucky State Police.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant may be approved to practice medicine or osteopathy in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(k)(t), 218A.205.

(3) 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 subse-

quent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
201 KAR 9:220E**

This emergency administrative regulation establishes the restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish restrictions upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor

PRESTON P. NUNNELLEY, President

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Emergency Administrative Regulation)**

201 KAR 9:220E. Restriction upon dispensing of Schedule II controlled substances and Schedule III substances containing Hydrocodone.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595(9) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes a restriction governing dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

Section 1. (1) No physician licensed in Kentucky shall dispense an amount greater than a forty-eight (48) hour supply of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to any patient, unless the dispensing is done as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services.

(2) A physician licensed in Kentucky shall not act to avoid the limitation upon dispensing set out in subsection (1) of this section by dispensing Schedule II controlled substances or Schedule III controlled substances containing hydrocodone to a patient on consecutive or multiple occasions.

(3) Any violation of this section shall be considered a violation of KRS 311.595(12) and of 311.595(9), as illustrated by KRS 311.597(1)(b), and shall constitute a legal basis for disciplinary action pursuant to KRS 311.595.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish a restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically establish a restriction upon the dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish a restriction upon the dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all physicians in the Commonwealth of Kentucky that prescribe Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required on the part of the affected physicians.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to regulated entities associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a); 218A.205

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 9:230E

This emergency administrative regulation establishes required registration in the KASPER system required for all physicians who hold a valid DEA permit to prescribe controlled substances in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish required registration in the KASPER system and enforcement, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor
PRESTON P. NUNNELLEY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Emergency Administrative Regulation)

201 KAR 9:230E. Required Registration in the KASPER System; Legal Requirements for Prescribing Controlled Substances in the Commonwealth of Kentucky; Enforcement.

RELATES TO: KRS 311.530-311.620, 311.990, 218A.202

STATUTORY AUTHORITY: KRS 311.565(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. KRS 311.595(9) and (12) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.

Section 1. (1) Effective July 20, 2012, every licensee who holds a valid Drug Enforcement Administration (DEA) permit to prescribe or dispense controlled substances to humans in the Commonwealth of Kentucky must be registered with the Cabinet for Health and Family Services to use the KASPER system.

(2) Any licensee who obtains a DEA permit to prescribe or dispense controlled substances to humans in the Commonwealth of Kentucky following July 20, 2012 shall register, within three (3) working days of the date of issuance of the DEA permit, with the

Cabinet for Health and Family Services to use the KASPER system.

(3) Every licensee who holds a valid DEA permit to prescribe or dispense controlled substances to humans in the Commonwealth of Kentucky shall maintain registration with the Cabinet for Health and Family Services to use the KASPER system continuously during their licensure within the Commonwealth of Kentucky.

(4) Failure of a licensee to register with the Cabinet for Health and Family Services to use the KASPER system within the time designated or to maintain such registration continuously during their licensure, as required by subsections (1) to (3) of this section shall constitute violations of KRS 311.595(9) and (12) and shall provide a basis for disciplinary action against their Kentucky licenses pursuant to KRS 311.595.

Section 2. (1) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee must hold a valid DEA permit to do so and must be registered with the Cabinet for Health and Family Services to use the KASPER system.

(2) Failure to be registered with the Cabinet for Health and Family Services to use the KASPER system at any time while the licensee holds a valid DEA permit to prescribe or dispense controlled substances to humans within the Commonwealth of Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(3) If the board receives documentation from the Cabinet for Health and Family Services that a licensee holds a valid DEA permit to prescribe or dispense controlled substances to humans within the Commonwealth of Kentucky, but is not currently registered with the Cabinet to use the KASPER system, the board shall:

(a) Immediately send written notice, by certified mail, to the physician that the physician must register with the Cabinet for Health and Family Services to use the KASPER system within seven (7) days of receipt of the written notice;

(b) Confirm with the Cabinet for Health and Family Services that the physician registered with the cabinet to use the KASPER system; and

(c) If the physician failed to register with the Cabinet for Health and Family Services to use the KASPER system within the seven (7) days following receipt of the written notice, the appropriate Inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until such time as the licensee has registered with the cabinet to use the KASPER system.

(4) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to subsection (3) of this section shall remain valid and in effect until the board has received written verification from the cabinet that the licensee has registered with the cabinet to use the KASPER system. Upon receipt of such written verification, the panel or its chair will immediately issue an order terminating the emergency order issued pursuant to this section;

(5) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order of restriction if presented with a written notification on cabinet letterhead stating that the affected licensee holds a valid DEA permit but is not registered with the cabinet to use the KASPER system.

Section 3. If a licensee should prescribe or dispense controlled substances within the Commonwealth of Kentucky during any period when the licensee is not registered with the cabinet to use the KASPER system, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and will serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.
CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310
Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502)
429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the requirements for required registration in the KASPER system and provides for enforcement by the Board.
 - (b) The necessity of this administrative regulation: It is necessary to establish the requirements for registration in the KASPER system and to provide for enforcement by the board.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for required registration in the KASPER system and to provide for enforcement by the board.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish requirements for registration in the KASPER system and provides for enforcement by the board.
- (2) If this is an amendment to an existing regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation; Not Applicable.
 - (b) The necessity of the amendment to this administrative regulation; Not Applicable.
 - (c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.
 - (d) How the amendment will assist in the effective administration of the statutes. Not Applicable.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect all physicians licensed in the Commonwealth of Kentucky that hold a valid DEA permit to prescribe controlled substances.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 physician that holds a valid DEA permit to prescribe or dispense controlled substances in the Commonwealth of Kentucky must register with the Cabinet for Health and Family Services to use the KASPER system.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Board of Medical Licensure will not charge a fee for compliance with regulation.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will be able to monitor patients who are prescribed controlled substances in the Commonwealth of Kentucky.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: None.
 - (b) On a continuing basis: None.
 - (6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.
- (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 of fees or funding will be necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.
 - (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.202.
 - (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
 - (c) How much will it cost to administer this program for the first year? None.
 - (d) How much will it cost to administer this program for subsequent years? None.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
- Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 9:240E

This emergency administrative regulation establishes the requirements for emergency orders and hearings; appeals and other proceedings for physicians holding a license to practice medicine or osteopathy in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish requirements for emergency orders and hearings; appeals and other proceedings for physicians in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor
PRESTON P. NUNNELLEY, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Emergency Administrative Regulation)

201 KAR 9:240E. Emergency orders and hearings; appeals and other proceedings.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a)
EFFECTIVE: July 20, 2012
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. The purpose of this administrative regulation is to set for the procedure to be followed in handling emergency proceedings before the board.

Section 1. Authority to Issue Emergency Order; Timing. (1) An inquiry panel or the panel's chair, acting on behalf of the inquiry panel, may issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the

Commonwealth of Kentucky whenever the inquiry panel or the panel's chair has probable cause to believe that:

(a) The physician has violated one (1) or more terms of an agreed order entered into between the physician and one (1) of the board's panels, or has violated one (1) or more terms of a disciplinary order issued by one (1) of the board's hearing panels; or

(b) The physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

(2) The inquiry panel will normally make such determination when it considers a completed investigation pursuant to KRS 311.591(3) at a regularly scheduled meeting of the inquiry panel.

(3) An inquiry panel's chair may act on behalf of the inquiry panel and issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky when the panel chair determines that a ground for emergency order delineated in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the inquiry panel. If an emergency hearing is scheduled prior to the next regularly scheduled meeting of the inquiry panel, the panel chair may also act on behalf of the inquiry panel and issue the complaint required to support the continuation of the emergency order. Whenever the panel chair acts on behalf of the inquiry panel pursuant to this subsection, the panel chair shall report such actions to the inquiry panel at its next regularly scheduled meeting.

Section 2. Findings of Fact and Conclusions of Law. (1) The inquiry panel, or the panel chair acting on the panel's behalf, may consider any evidence or information normally considered by the board's inquiry panels in making charging decisions pursuant to KRS 311.591(3) in making the determination whether to issue an emergency order pursuant to Section 1 of this administrative regulation. Such evidence or information may include:

(a) Applications for licensing or renewal filed by the physician with this or any other licensing board;

(b) Any prior or current order issued by the board or one (1) of its panels affecting the physician's Kentucky license;

(c) Any prior or current order issued by another state's licensing authority affecting the physician's license in that state;

(d) The records of any criminal proceeding involving the physician;

(e) A report by or record of any governmental agency, including law enforcement agencies, and including Kentucky All Schedule Prescription Electronic Reporting (KASPER) reports or summaries of or references to such reports;

(f) Patient records maintained by the physician, or summaries of or references to the contents of such records;

(g) Records or reports issued or maintained by pharmacies;

(h) Records or reports issued or maintained by hospitals, including peer review reports relating to the physician and medical records of patients treated by the physician in the hospital;

(i) Records or reports issued or maintained by any business;

(j) Investigative reports prepared by the board's investigators, including summaries of verbal or written statements by witnesses and summaries of evidentiary documents reviewed by the investigators;

(k) Investigative reports prepared by the board's investigators involving other investigations conducted by the board relating to the physician;

(l) Oral or written statements by the physician, or the physician's agent, relating to the investigation;

(m) Reports of clinical assessments relating to the physician, including reports by the Center for Personalized Education for Physicians (CPEP), Denver, Colorado;

(n) Physical or mental evaluations or assessments of the physician;

(o) Written reports of patient record reviews conducted by a consultant under contract with the board to perform such reviews;

(p) Written reports of patient record reviews conducted by a licensed physician performing such review on behalf of the physician.

(2) The evidence or information considered by the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall constitute the board's record of proceedings relating to the issuance of

an emergency order of restriction or suspension.

(3) If the inquiry panel or the panel chair, acting on behalf of the inquiry panel, issues an emergency order of restriction or suspension against a physician's license, the emergency order shall be a written order and shall include findings of fact and conclusions of law, supported by the board's record of proceedings, upon which the agency bases the emergency order.

(4) Any emergency order issued by the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall be served upon the affected physician in the manner specified in KRS 13B.050(2). The emergency order shall become effective immediately upon receipt by the affected physician or the physician's representative.

Section 3. Authority to Issue Emergency Order of Suspension Upon Felony Indictment. (1) If a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to controlled substances, that licensee's practice shall be considered an immediate danger to the public health, safety or welfare pursuant to KRS 311.592 and 13B.125.

(2) If the board receives verifiable information that a licensee has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to controlled substances, the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall immediately issue an emergency order suspending that licensee's Kentucky license.

(3) The emergency order of suspension shall remain in effect until such time as the criminal charges contained in the indictment are finally resolved and the board's hearing panel has finally resolved the matter after receipt of the court documents finally resolving the criminal charges in the indictment.

(4) If the affected physician should request an emergency hearing, the hearing officer shall affirm the emergency order of suspension if presented with a certified copy of the indictment.

Section 4. Request for and Timing of Emergency Hearing; Waiver. (1) A physician required to comply with an emergency order issued by an inquiry panel or panel chair, acting on behalf of an inquiry panel, may request an emergency hearing at any time between the effective date of the emergency order and the effective date of an order finally resolving the underlying complaint.

(2) Any request for an emergency hearing must be presented to the board in writing, but may be submitted by facsimile or email. Upon receipt of a written request for an emergency hearing, the board shall schedule the emergency hearing on one (1) of the ten (10) working days following the date of receipt of the written request; the day on which the written request is received by the board shall not be considered one (1) of the ten (10) working days specified in the statute's requirement. A written request will be considered received on a particular work day if it is received by the board during the board's scheduled operating hours for that day. If the board receives a request for emergency hearing by facsimile or email received after scheduled operating hours, the request will be considered to have been received the next scheduled work day of the board.

(3) A written request for emergency hearing shall be considered a certification by the affected physician and the physician's counsel, if any, that the physician is available to participate in an emergency hearing on any of the ten (10) working days following the date of the board's receipt of the written request for emergency hearing. The refusal of the physician to accept a hearing date on a date specified by the board within the ten (10) working days allotted to the board by statute to conduct the emergency hearing shall constitute a waiver of the requirement of KRS 13B.125(3) to conduct the emergency hearing within ten (10) working days of receipt of a request. If there is a waiver of the ten (10) working day requirement of the statute, the hearing officer and parties will schedule the emergency hearing to commence at the next date available to the hearing officer and both parties.

(4) Unless there is a waiver of the requirement, the board must commence the emergency hearing within ten (10) working days of receipt of the written request for emergency hearing. If the parties are unable to conclude the emergency hearing on the initial date assigned, the emergency hearing will resume on the next date available to the hearing officer and both parties and shall continue

on dates available to the hearing officer and both parties until concluded.

Section 5. Scope and Conduct of Emergency Hearing; Hearing Officer's Role. (1) The emergency hearing may be conducted by the inquiry panel or its panel chair, acting on behalf of the inquiry panel, or by a qualified hearing officer appointed by the board's executive director.

(2) The singular function of the party conducting the emergency hearing is to determine whether the findings of fact providing the bases for the emergency order are supported by substantial evidence and, if so, constitute one (1) or more violations of KRS 311.595.

(3) Given the ten (10) working day requirement of KRS 13B.125(3) and the unique nature of the hearing, it is not practicable pursuant to KRS 13B.125(3) to conduct the emergency hearing in conformity with the provisions of KRS 13B.050; 13B.060; 13B.070; 13B.080(2), 13B.080(3)(as it relates to discovery orders) or (4)(to the extent it conflicts with this regulation); or KRS 13B.090(1)(to the extent it prohibits consideration of hearsay evidence), (2)(other than the requirement that all testimony shall be made under oath or affirmation), (3) or (7); KRS 13B.110 or 13B.120.

(4) There shall be no motion practice, prior to or as part of the emergency hearing, relating to the legality or validity of the emergency order under consideration or relating to evidentiary issues.

(5) As the agency specifically charged by statute with the regulation of the practice of medicine and osteopathy within the Commonwealth of Kentucky, the board has determined the standards of acceptable and prevailing practice within the Commonwealth may be determined by an expert review of a physician's patient records by a qualified expert. The board has also determined that it is professionally appropriate for such expert reviews to be conducted on the board's behalf by licensed physicians who have entered into a contractual relationship with the board to serve as board consultants. By entering into contractual relationships with such licensed physicians, the board has determined that such physicians are legally qualified to provide expert opinions regarding the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky and to provide expert opinions as to whether the affected physician has violated those standards or committed other professional violations of the board's statutes. Pursuant to KRS 13B.090(5), the hearing officer conducting the emergency hearing shall take official notice that the findings and opinions within the contractual reviewer's report are technical or scientific facts within the board's specialized knowledge, shall accept the board's determination that its contractual reviewers meet the legal qualifications to render such expert opinions and shall recognize that the inquiry panel or panel chair, acting on the panel's behalf, may consider and accept those opinions rendered as part of a contractual review of the physician's practice. The party conducting the emergency hearing shall not conduct a separate hearing or inquiry into the qualifications of the contractual reviewer who performed the record review on behalf of the board or of a licensed physician who performed a record review on behalf of the affected physician.

(6) The emergency hearing shall be conducted in the following manner:

(a) The board shall produce and the hearing officer shall accept the record of the proceedings relating to the issuance of an emergency order under consideration;

(b) The board shall not be required to produce any further evidence to support the emergency order. However, the board may call the affected physician to testify, as if under cross-examination, regarding the factual accuracy of evidence or information cited in the record of proceedings relating to the issuance of the emergency order. Refusal of the affected physician to answer the board's questions relating to the factual accuracy of evidence or information cited in the record of proceedings relating to the issuance of the emergency order, for any reason, shall be considered an interference with the board's ability to establish the factual accuracy of the evidence or information and a rescission of the physician's request for emergency hearing;

(c) The affected physician may testify, may produce factual evidence, produce hearsay evidence through documents, or call

lay witnesses to the extent that such evidence specifically tends to demonstrate that a factual statement relied upon by the board's contractual reviewer or by the inquiry panel or panel chair, acting on behalf of the inquiry panel, is factually incorrect or false;

(d) The affected physician may only call the board's contractual reviewer for the purpose of cross-examination if the hearing officer determines on the record that the physician's evidence has established that one or more factual statements relied upon by the contractual reviewer in their expert report is demonstrably false or incorrect. If the hearing officer makes such a determination, the affected party may call the board's contractual reviewer for the purpose of cross-examination under the following conditions:

1. The cross-examination of the board's contractual reviewer will be scheduled at the earliest date available to the reviewer and the parties so long as such scheduling does not disrupt the normal operation of the reviewer's professional practice and does not disrupt the care of the reviewer's normal patients;

2. The affected physician shall reimburse the contractual reviewer for the time spent testifying at the emergency hearing, at the rate normally paid the reviewer by the board, and shall tender the expected reimbursement to the reviewer prior to the reviewer's appearance at the emergency hearing;

3. The cross-examination of the board's contractual reviewer shall be limited to factual statements and opinions rendered in the reviewer's report, and the effect upon such opinions of a determination that one or more underlying factual statements relied upon by the reviewer is false or factually incorrect;

4. Upon completion of the cross-examination, the board and the hearing officer may ask questions of the contractual reviewer relevant to the cross-examination.

(7)(a) Within five (5) working days of completion of the emergency hearing, the hearing officer shall issue a written decision in which the hearing officer shall:

1. Affirm the emergency order if there is substantial evidence of a violation of law and the inquiry panel has determined that the violation(s) involved constitutes an immediate danger to the public health, safety, or welfare. If there is substantial evidence of a violation of law, the hearing officer shall not substitute his or her judgment as to the level of public protection necessary for the emergency order;

2. Revoke the emergency order only if there is no substantial evidence of a violation of law. The findings of fact shall be found to be supported by substantial evidence if there is a factual basis for the findings, even if there is a conflict in the evidence or information considered by the inquiry panel or panel chair, acting on behalf of the inquiry panel. A finding that there is no substantial evidence to support the findings of fact would require a finding that there is a complete absence of factual basis for the findings; or

3. Modify the emergency order only if the emergency order relied upon multiple violations of law and the hearing officer has determined that there is no substantial evidence to support one (1) or more of those violations. In that event, the hearing officer may consider the remaining violation(s) for which there is substantial evidence and may modify the level of protection so long as the modified protection fully protects the public health, safety or welfare based upon the dangers presented by the licensee's commission of the remaining violation(s).

(b) The hearing officer shall not include additional findings of fact or conclusions of law in any written decision affirming the emergency order under consideration. The written decision shall be sufficient if it determines that there was substantial evidence of a violation of law and the panel had determined that the violation constituted an immediate danger to the public health, safety or welfare.

(c) If the hearing officer should issue a written decision revoking or modifying the emergency order under consideration, the hearing officer shall include findings of fact and conclusions of law to support such action.

Section 6. Judicial Review. (1) In order to grant relief from a final order resulting from an emergency hearing, a reviewing court must conclude that the hearing officer was clearly erroneous in finding that the findings of fact were supported by substantial evidence or in finding that the findings of fact established a violation of

one (1) or more provisions of KRS 311.595.

(2) A reviewing court shall not award injunctive relief from a final order affirming an emergency order of suspension or restriction without providing the board with a reasonable opportunity to be heard.

(3) If the findings of fact are supported by substantial evidence and establish one (1) or more violations of KRS 311.595, the reviewing court shall defer to the professional judgment of the board's inquiry panel or panel chair, acting on behalf of the inquiry panel, as to the specific protections required to protect the public health, safety or welfare. The reviewing court shall not substitute its judgment for the board's as to the level of protection required based upon the violations found.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222 (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for emergency hearings before the board.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the procedure for emergency hearings before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the procedure for emergency hearings before the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the procedure for emergency hearings before the board.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect any licensee that has emergency disciplinary action filed against their license.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 be required to follow this procedure if an emergency order has been filed against their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only cost will occur if the licensee has an emergency order filed against their license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have procedures to follow for emergency orders.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implemen-

tation and enforcement of this administration regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 9:250E

This emergency administrative regulation establishes the requirements for registration and oversight of pain management facilities in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish requirements for registration and oversight of pain management facilities in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor

PRESTON P. NUNNELLEY, President

KENTUCKY BOARD OF MEDICAL LICENSURE General Government Cabinet Kentucky Board of Medical Licensure (New Emergency Administrative Regulation)

201 KAR 9:250E. Registration and Oversight of Pain Management Facilities.

RELATES TO: KRS 218A.175, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the requirements for registration and oversight for pain management facilities.

Section 1. Definitions. (1)(a) "Pain Management Facility" means a facility where the majority of the patients receiving treatment from the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, and:

1. The facility's primary practice component is the treatment of pain; or

2. The facility advertises in any medium for any type of pain management services.

(b) If a facility meets the criteria outlined in paragraph (a) of this subsection, it will be considered a "pain management facility" regardless of whether the owners or operators of the facility have designated the facility as an "urgent treatment center," "internal medicine practice," "general medicine practice," "family practice," "private clinic," or some other type of practice.

(c) "Pain Management Facility" does not include the following:

1. A hospital defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;

2. A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;

3. A hospice program or residential hospice facility licensed under KRS Chapter 216B;

4. An ambulatory surgical center licensed under KRS Chapter 216B; or

5. A long-term-care facility licensed under KRS Chapter 216.510.

(2) For the purposes of subsection (1) of this section, "practitioner" includes physicians, nurses, physician assistants, acupuncturists and any other licensed health care practitioner.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Board" means the Kentucky Board of Medical Licensure.

(5) "License in good standing" means an active license to practice medicine or osteopathy that is not currently subject to any final order, agreed order, emergency order, interim agreed order of any nature, or letter of agreement issued by or entered into with the Board.

Section 2. Ownership or Investment Interest. (1)(a) No person, other than a physician who is currently licensed to practice medicine or osteopathy within the Commonwealth of Kentucky and whose Kentucky medical or osteopathic license is presently in good standing, shall have an ownership or investment interest in a pain management facility that is formed or comes into existence after April 24, 2012, or in a pain management facility existing on April 24, 2012, if there has been an administrative sanction or criminal conviction relating to controlled substances imposed upon the facility or upon any person employed by the facility for an act or omission done within the scope of the facility's licensing or the person's employment.

(b) Any person may have an ownership or investment interest in a pain management facility that was in existence and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed upon the facility or upon any person employed by the facility for an act or omission done within the scope of the facility's licensing or the person's employment. If the facility or one (1) or more of its employees sustains such an administrative sanction or criminal conviction, only a physician licensed in good standing in Kentucky may have an ownership or investment interest in the facility from the date of the sanction or conviction forward.

(c) Credit extended by a financial institution as defined in KRS 136.500 to the facility shall not be deemed an investment interest under this subsection.

(d) A physician who has an ownership or investment interest in a pain management facility during any period when the physician is not licensed to practice medicine or osteopathy within the Com-

monwealth of Kentucky shall be deemed to be in violation of KRS 311.595(12) and shall be deemed to be practicing medicine without a license and subject to criminal sanctions. If the Board determines that a physician has maintained an ownership or investment interest in a pain management facility during a period when that physician was not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky, it may deny an application for licensing filed by that physician or may take appropriate disciplinary action against a license previously issued to the physician.

(e) A physician who maintains an ownership or investment interest in a pain management facility during any period when their Kentucky license is not in good standing shall be in violation of KRS 311.595(12) and subject to disciplinary action by the Board.

Section 3. Divestiture of Ownership or Investment Interest. (1) A physician who has an ownership or investment interest in a pain management facility shall immediately divest himself of that ownership or investment interest when:

(a) The physician's Kentucky license is no longer active for any reason; and/or

(b) The physician's Kentucky license becomes subject to any final order, agreed order, emergency order, interim agreed order of any nature, or letter of agreement issued by or entered into with the Board.

(2) (a) If a physician fails to immediately divest himself of the ownership or investment interest in the pain management facility as required by subsection (1) of this section, the Board may institute an action for injunctive relief pursuant to KRS 311.605(3) and (4) to require the physician to immediately divest himself of the ownership or investment interest in the pain management facility.

(b) An unlawful ownership or investment interest in a pain management facility shall be considered the unlawful practice of medicine and shall be considered to cause irreparable injury to the Commonwealth, acting through this board.

Section 4. Registration; Amended Registration; Fee. (1)(a) On or before August 1, 2012 and August 1 of each succeeding year, every pain management facility operating as the private office or clinic of a physician within the Commonwealth of Kentucky shall register with the Board, providing the following specific information in writing:

1. The name, business address, profession, current professional licensing status and nature and extent of ownership or investment interest of each person who has or maintains an ownership or investment interest in the pain management facility. For each person who has or maintains an ownership or investment interest in the pain management facility, the facility will report whether that person has an ownership or investment interest in any other pain management facility operating within the Commonwealth of Kentucky and, if so, the name and address of the other pain management facility(ies) in which the person has an ownership or investment interest;

2. The names and addresses of every practice location owned and operated by that pain management facility;

3. The hours of operation of every practice location owned and operated by that pain management facility;

4. The names and professional status of each employee at each practice location owned and operated by that pain management facility;

5. The name, professional license number and practice address of the physician owner or owner's designee who is a physician and will be physically present practicing medicine in the pain management facility for at least fifty (50) percent of the time patients are present at the facility. The facility shall also state its plan for ensuring that the designated physician owner or owner's physician designee will be physically present practicing medicine in the facility and, if the facility owns and operates multiple practice locations, the plan to ensure that a physician owner or owner's physician designee is physically present practicing medicine in each practice location for at least fifty (50) percent of the time that patients are seen at each practice location;

6. For each owner's physician designee who will fulfill the oversight responsibility, an attestation that the physician designee is employed by the owner and the plan for owner supervision of the

physician designee;

7. An attestation by the physician owner that the owner or owner's physician designee meets one of the following qualifications for fulfilling the oversight responsibility, specifying each qualification met by the physician owner or owner's physician designee:

a. Holds a current subspecialty certification in pain management by a member of the American Board of Medical Specialties;

b. Holds a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

c. Holds a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties;

d. Holds a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

e. Holds a current board certification by the American Board of Pain Medicine;

f. Holds a current board certification by the American Board of Interventional Pain Physicians;

g. Has completed an accredited fellowship in pain management; or

h. Was an owner or practiced in that specific pain management facility prior to and continuing through July 20, 2012 and meets the following qualifications:

(i) Completed an accredited residency which included a component in the practice of pain management;

(ii) Practiced in the specialty of pain management during the five-year period preceding July 20, 2012;

(iii) Is eligible for and has provided the Board with written verification that the licensee has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

(iv) Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician must meet one (1) of the requirements of clauses a. to f. of this subparagraph, to continue to be qualified to provide the on-site supervision required by Section 6 of this administrative regulation.

(2) At the time of filing of the registration required by subsection (1) of this section, each pain management facility operating as the private office or clinic of a physician shall pay an annual fee of \$1,000.00 to the Board to defray the costs of registration and enforcement of this administrative regulation.

(3) If, during the effective period of the annual registration, a new or different physician obtains an ownership or investment interest in the pain management facility, or there is a change in the physician owner or physician designee who will practice on-site at least fifty (50) percent of the time the facility is open to patients, the facility shall file an amended registration with the Board identifying these physicians and providing the information required by subsection (1) of this section about the new or different physicians, within ten (10) days of that change.

(4) Failure to file the required registration or to pay the annual fee on or before August 1 of each year shall constitute a violation of KRS 311.595(12) and will serve as a basis for discipline by the Board against the license of any physician who has an ownership or investment interest in the facility that failed to file the required registration.

Section 5. Identification and Qualifications of Prescribers Employed by the Facility; Notification of Changes. (1) As part of its initial and annual registration, the facility shall identify each physician, who is employed by the facility in any capacity, who will be prescribing or dispensing controlled substances to patients of the facility.

(2) Each licensed physician who will prescribe or dispense controlled substances to patients of the facility as part of their employment arrangement with the facility must be board certified throughout the period they are prescribing or dispensing controlled

substances to patients of the facility.

(3) No licensed physician may prescribe or dispense controlled substances to patients of the facility if the physician has:

(a) Had an application for a license or certificate to prescribe, dispense, or administer controlled substances denied in any jurisdiction or by any governmental agency;

(b) Had a Drug Enforcement Administration permit to prescribe, dispense or administer controlled substances revoked;

(c) Had their professional ability or authority to prescribe or dispense controlled substances revoked, restricted, or limited in any manner by a licensing authority of any state; or

(d) Been convicted of or entered a plea of guilt, nolo contendere or Alford plea, regardless of adjudication, to any felony or misdemeanor relating to controlled substances, in any state or federal court.

(4) Any time a licensed physician with the responsibility to prescribe or dispense controlled substances to patients of the facility leaves the employment of the facility or is hired by the facility, the facility shall notify the board in writing within ten (10) days of each change in physician staffing of the facility.

Section 6. On-site Supervision. (1) At least one (1) of the physician owners of the pain management facility, or an owner's designee who meets the qualifications established by this administrative regulation, shall be physically present and practicing medicine or osteopathy in each practice location of the pain management facility for at least fifty (50) percent of the time that patients are present at the practice location(s) of the facility.

(2) If, for whatever reason, the physician owner or qualified designee is not present in each practice location of a pain management facility for at least fifty (50) percent of the time that patients are present at the practice location(s) of the facility for any given calendar week, the facility shall immediately notify the board of that fact in writing and include the reasons for the non-compliance.

(3) Any violation of this section shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.595(3) and (4) by the physician owner and, if applicable, the qualified designee who was responsible for being present at the practice location during that period.

Section 7. Methods of Payment. (1) Each pain management facility shall accept private health insurance as one (1) of the facility's allowable forms of payment for goods and services provided, so long as the goods or services provided are covered items under the applicable health insurance plan.

(2) Each pain management facility shall accept payment for services rendered or goods provided to a patient only from the patient or from the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

Section 8. Record-Keeping; Inspection. (1) Each pain management facility shall document on a weekly basis that a physician owner or an owner's physician designee who is employed by and under the direct supervision of the owner was physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients were present in the facility during that week. Such documentation shall include:

(a) The name, practice address, and phone number of the physician owner or physician designee who fulfilled this oversight function for that specific week;

(b) The practice address of each practice location owned and operated by that pain management facility;

(c) The days and hours each practice location of the pain management facility was open to patients during that specific week;

(d) The days and hours the physician owner or physician designee was present in each practice location for the pain management facility for that specific week; and

(e) A listing of the patients treated by the physician owner or physician designee during that specific week.

(2) Each pain management facility shall also utilize and maintain daily sign-in sheets, that include the legible name of each patient seen by the practice or facility on that day, for each and every day that the practice or facility is open to patients or the public, for

each practice location of the practice or facility.

(3) The pain management facility shall maintain the weekly reports required by subsection (1) of this section and the daily sign-in sheets required by subsection (2) of this section on site in a readily accessible location for a minimum period of six (6) years.

(4) Upon request by an employee or agent of the Board, the pain management facility shall permit the Board employee or agent to inspect and copy the weekly reports and daily sign-in sheets maintained on site.

(5) For the purpose of enforcing the provisions of this administrative regulation, agents of the board shall have the power and authority to:

(a) Enter upon professional premises during periods when those premises are otherwise open to patients or the public;

(b) Obtain evidence, including but not limited to psychiatric or nonpsychiatric patient records, by consent or pursuant to a subpoena or search warrant;

(c) Interview all persons including owners, employees, or patients; and

(d) Require the production of books, papers, documents, or other documentary evidence either by consent or pursuant to a subpoena or search warrant.

Section 9. Proof of Operation of a Pain Management Facility.

(1) The board may establish sufficient proof that a clinic, practice, or facility is a pain management facility subject to the provisions of this administrative regulation by establishing that:

(a) The facility has filed a registration with the board as a pain management facility; or

(b) 1. For any selected thirty (30) day period, the majority of patients listed on the daily sign-in sheets maintained by the clinic, practice, or facility received controlled substances or a prescription for controlled substances during that period; and

2. One (1) of the following additional conditions was present during that thirty (30) day period:

a. A primary component of the practice was the treatment of pain; or

b. The facility advertised in any medium for any type of pain management services.

(2) The board may establish sufficient proof that the majority of patients listed on the daily sign-in sheets for the specified thirty (30) day period received controlled substances or a prescription for controlled substances on their visit by comparing the names on the sign-in sheet to the KASPER report for that thirty (30) day period.

Section 9. Physical Environment. (1) Each pain management facility shall meet each of the requirements for the physical environment of the facility as set out in 902 KAR 20:420.

(2) Each individual failure of a physician who has an ownership or investment interest in a pain management facility to fully comply with the requirements of 902 KAR 20:420, Section 9, shall constitute a separate violation of KRS 311.595(9) and (12).

Section 10. Violations; Enforcement; Emergency Action. (1) Any violation of the requirements of this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3) given the circumstances.

(2) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky while practicing at a pain management facility, a licensee must practice in a lawful pain management facility.

(3) A pain management facility shall be considered an unlawful pain management facility if it:

(a) Permits unqualified persons to gain or maintain an ownership or investment interest in the pain management facility; or

(b) Fails to ensure that a qualified physician owner or physician designee is physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility.

(4) Prescribing or dispensing controlled substances within the Commonwealth of Kentucky while employed by or practicing in an unlawful pain management facility within the Commonwealth of

Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare of the public, for the purposes of KRS 311.592 and 13B.125.

(5) If the board receives proof that a licensed physician is prescribing or dispensing controlled substances while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until such time as the licensee has provided sufficient proof that they are no longer employed by or practicing in an unlawful pain management facility.

(6) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to subsection (3) of this section shall remain valid and in effect until the board has received sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility. Upon receipt of such sufficient proof, the panel or its chair will immediately issue an order terminating the emergency order issued pursuant to this section.

(7) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with substantial evidence that the licensee was prescribing or dispensing controlled substances within an unlawful pain management facility.

(8) If a licensee should prescribe or dispense controlled substances within the Commonwealth of Kentucky during any period when the licensee is employed by or practicing in an unlawful facility, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and will serve as the basis for disciplinary sanctions pursuant to KRS Chapter 311.595.

Section 11. Periodic KASPER Reviews. (1) The board shall have the authority pursuant to KRS 218A.202 and 218A.240 to obtain KASPER reports and analyses for practitioners practicing in pain management facilities.

(2) At least once each year, the board shall obtain a KASPER review and analysis for each physician who has or maintains an ownership or investment interest in, or is employed by, or practices in, a pain management facility to determine whether improper, inappropriate, or illegal prescribing is occurring. If the board determines that there is evidence to indicate that improper, inappropriate, or illegal prescribing is occurring, it will initiate an investigation of that physician and notify the appropriate agencies of its investigation.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registration and oversight of pain management facilities.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for registration and oversight of pain management facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish requirements for registration and oversight of pain management facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for registration and oversight of pain management facilities.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect anyone that has an ownership or interest in a pain management facility.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Registration will be required for pain management facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The registration fee is \$2,000 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pain management facilities will be regulated and controlled so as to curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: \$100,000.

(b) On a continuing basis: \$100,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Fees generated from registration of pain management facilities will provide the source of funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a fee of \$2,000 per year for the registration of pain management facilities.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.175.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 9:260E

This emergency administrative regulation establishes the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor

PRESTON P. NUNNELLEY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Emergency Administrative Regulation)

201 KAR 9:260E. Professional Standards for Prescribing and Dispensing Controlled Substances.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances. Each physician who is authorized to prescribe or dispense controlled substances shall conform to the following mandatory professional standards relating to controlled substances while practicing within the Commonwealth of Kentucky.

Section 1. Exceptions. (1) The professional standards established in this administrative regulation shall not apply to physicians prescribing or dispensing controlled substances:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital, during and as part of a normal and expected part of the patient's course of admission at that hospital;

(c) To a patient for the treatment of pain associated with the treatment of cancer;

(d) To a patient who is a registered resident of a skilled long-term care facility; or

(e) As a direct part of their professional responsibilities in an emergency department and in accordance with the professional standards established in Section 5 of this administrative regulation.

(2) These exceptions do not apply to the standards established in KRS 218A.172.

Section 2. Professional Standards for Initial Prescribing or Dispensing of Controlled Substances. Prior to the initial prescribing or dispensing of any controlled substance for a specific medical complaint and related symptoms, each physician shall:

(a) Verify the identity of the patient by a current and valid government-issued photographic identification. If the physician does not have a copy of that identification in the patient's medical record, that physician shall ensure that the identification is copied and placed in the patient's medical record for future reference;

(b) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and conduct a

physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record;

(c) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. This requirement to obtain and review a KASPER report shall not apply to:

1. A physician prescribing or dispensing controlled substances to a patient, who is younger than eighteen (18) years of age at the time of prescribing or dispensing, for the treatment of Attention Deficit Hyperactive Disorder or Attention Deficit Disorder; or,

2. A physician prescribing or dispensing Schedule IV or V controlled substances other than those listed in this specific subsection. The physician shall obtain and review a KASPER report before initially prescribing or dispensing any of the following Schedule IV controlled substances:

- (a) Ambien;
- (b) Anorexics;
- (c) Ativan;
- (d) Klonopin;
- (e) Librium;
- (f) Nubain;
- (g) Oxazepam;
- (h) Phentermine;
- (i) Soma;
- (j) Stadol;
- (k) Stadol NS;
- (l) Tramadol;
- (m) Valium;
- (n) Versed; and
- (o) Xanax; or

3. A physician who is unable to obtain and review a KASPER report in a timely manner for reasons beyond the physician's control determines, upon the available facts, that it is medically appropriate to prescribe controlled substances in the absence of a KASPER report. For this exception, the physician shall document as soon as possible the circumstances that made it impossible to obtain and review a KASPER report before prescribing and the reason(s) the physician determined it was medically appropriate to prescribe controlled substances in the absence of KASPER information.

(d) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified. When the identified risks are significant or unique, the physician shall document in the patient's record the reasoning underlying the decision to prescribe or dispense controlled substances in spite of those risks;

(f) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period;

(g) Not prescribe or dispense long-acting or controlled-release opioids (e.g. OxyContin, fentanyl patches, and methadone) for acute pain;

(h) Explain to the patient that controlled substances used to treat an acute medical complaint are for time-limited use, and that the patient should discontinue the use of controlled substances when the condition requiring the controlled substance use has resolved;

(i) Explain to the patient how to safely and properly dispose of any unused controlled substances.

Section 3. Professional Standards to Commence the Long-Term Use of Any Controlled Substance. Before a physician continues to prescribe or dispense any controlled substance to a patient for a medical complaint or its associated symptoms for a total period of longer than three (3) months, the physician shall comply with the following mandatory professional standards:

Patient History. (1) The physician shall obtain the following

information from the patient and record all relevant information in the patient's medical record in a legible manner, in sufficient detail to provide for meaningful diagnosis and treatment of the patient, or to allow for another practitioner to assume the medical care of the patient at any given time in a safe and medically appropriate manner:

(a) History of present illness, including each of its components;

(b) Past medical history, including past diagnostic efforts and treatments for the present medical complaint and other medical complaints;

(c) History of legal or illegal substance use by the patient and by first degree relatives of patient, including treatments for abuse or dependence;

(d) Past family history of illnesses and treatment relevant to the medical complaint and related symptoms; and,

(e) Psychosocial history.

(2) If a physician's practice utilizes a patient questionnaire as a primary source of obtaining such information, the physician shall ensure that:

(a) All questions are completely answered;

(b) Any material conflict in the answers is clarified with the patient;

(c) Complete information is obtained regarding any significant disclosure; and,

(d) All relevant information is incorporated into the patient's record and utilized in the development of the working diagnosis.

Physical Evaluations and Assessments. (1) The physician shall conduct a comprehensive physical examination of the patient for all medical conditions and related symptoms, other than psychiatric conditions, and properly document the findings of each evaluation or assessment in the patient's record, including but not limited to:

(a) Appropriate clinical examination addressing the medical complaint and related symptoms of a sufficient degree to support the medical indications for prescribing or dispensing controlled substances on a long-term basis;

(b) Measurable examinations that will establish baselines and will assist in establishing and periodically evaluating the functional goals of any treatment plan.

(4) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall arrange for such evaluation as quickly as possible in order to be able to incorporate the findings into the working diagnosis and treatment plan. The physician shall document the relevant information obtained from the evaluation. If the physician determines that such an evaluation is necessary and the patient declines or fails to complete the evaluations in a timely manner for any reason, then the physician shall not continue the use of controlled substances unless the physician determines that continued use of controlled substances is safe and medically appropriate in the absence of such information. In that event, the physician shall document the reasons that the patient failed to complete the evaluation and the reasoning supporting the continued use of controlled substances in the absence of that relevant information;

Obtaining Medical Records from Other Practitioners. (1) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of controlled substances, the physician shall request a copy of the other physician's records regarding the patient as quickly as possible, in order to incorporate such information into the working diagnosis and treatment plan;

(2) If the physician has requested a copy of the other physician's records and has not received them within a reasonable time, the physician will take appropriate steps to follow up and obtain such records. If the physician is unable, after reasonable attempts, to obtain the relevant records, the physician shall document the efforts made to obtain the records, the failure to receive the records, and the impact the inability to obtain such records has upon the physician's decision whether to continue or modify treatment, particularly the use of controlled substances, for that patient;

(3) Each physician, who receives a written request from another physician for a copy of records relating to that physician's prior treatment of a specific patient, shall promptly provide a copy of the patient's medical record to the requesting physician.

Establishing a Working Diagnosis. (1) Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms. It is not sufficient to simply describe or list the related symptoms;

(2) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as specialized evaluations or assessments, referral to appropriate specialists, usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis;

(3) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician must determine whether long term use of controlled substances is indicated and appropriate. The physician may determine that a different or lower level of treatment is more appropriate until a working diagnosis can be established;

(4) The physician shall document the working diagnosis or all of the efforts taken in their unsuccessful attempt to formulate a working diagnosis and the reasons for their decision whether or not to utilize controlled substances on a long-term basis in the absence of a working diagnosis.

Formulating a Treatment Plan. (1) The physician shall formulate and document in the patient's medical record the proposed treatment plan, based upon the working diagnosis of the medical complaint and related symptoms, along with relevant baseline information obtained in the evaluation of the patient;

(2) The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations, which will permit the physician to assess whether a treatment is appropriately addressing the medical complaint and improving the patient's functional abilities. Statements such as "treat [medical] condition and related symptoms", "to make patient feel better," or "prescribe controlled substances" are not sufficient treatment goals. The treatment plan shall include an exit strategy for the termination of use of any treatment modality, including controlled substances, for appropriate reasons;

Patient Screening. (1) The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

(a) Is presently suffering from abuse or dependence of any substance, including alcohol;

(b) Is presently suffering from a psychiatric or psychological condition that requires treatment or that may impact the patient's treatment with controlled substances; or

(c) Presents a significant risk for illegal diversion of controlled substances, based upon information, gained by obtaining and reviewing a current KASPER report for all available data on that patient, that the patient has obtained controlled substances from multiple practitioners or has refilled prescriptions for controlled substances inappropriately.

(2) If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, the physician shall refer the patient to an appropriate treatment program or provider, or to an addiction specialist. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from a qualifying psychiatric or psychological condition, the physician shall refer the patient for a psychological or psychiatric consultation, if appropriate. After making such referral, the physician shall consider the recommendations of the treatment program or specialist, before determining whether to continue with the long-term use of controlled substances with that patient, and, if so, appropriate treatment measures and monitoring. The physician shall document all relevant information about the screen, the referral, the recommendations, and any resulting prescribing decisions in the patient's medical record;

(3) If, after screening, the physician determines that there is a significant likelihood that the patient may illegally divert controlled substances, the physician must determine whether the use of a "prescribing agreement" would be sufficient to prevent diversion. This determination necessarily requires the physician to determine whether they have the professional resources to conduct necessary monitoring of the patient's controlled substance use. The terms of a "prescribing agreement" shall include, but not be limited

to the patient's agreement to:

(a) Avoid improper use of controlled substances;

(b) Identify other licensed professionals providing medical care to the patient and authorize the physician to communicate with these other providers to coordinate care, particularly prescribing or dispensing of controlled substances;

(c) Only obtain controlled substances from the designated physician;

(d) Only fill controlled substances prescriptions at an approved pharmacy;

(e) Submit to urine drug screens or pill counts on request;

(f) Not seek early refills or call-in prescriptions of controlled substances;

(g) To produce an official police report for any effort to replace controlled substances that were lost or stolen;

(h) If necessary, submit to third-party administration of controlled substances prescribed if determined appropriate.

In order to avoid confusion and for the benefit of both parties, the physician shall consider including in the agreement the consequences for a violation of each provision. The "prescribing agreement" and informed consent document may be combined into one document.

(4) The physician shall obtain and document a baseline urine drug screen to determine whether the medications that are being prescribed are in the patient's system and to determine whether any un-prescribed or illegal controlled substances are in the patient's system.

(5) If, after screening, the physician determines that the controlled substances prescribed to the patient will be used or are likely to be used other than medically or other than for an accepted therapeutic purpose, the physician shall not prescribe controlled substances to that patient;

Obtaining Informed Consent. (1) The physician shall explain the risks and benefits of long term use of controlled substances and obtain informed consent from the patient for such prescribing. The decision to provide controlled substances to a patient on a long-term basis should be a deliberate and conscious decision by both the physician and the patient, after full consideration of the risks and benefits of such treatment;

(2) After explaining the risks and benefits of long-term use of controlled substances, the physician shall obtain the informed consent of the patient, in a writing that specifically sets out each risk and benefit discussed with the patient, and shall include and maintain that written informed consent in the patient's medical record. The informed consent document and any "prescribing agreement" may be combined into one document.

Initial Trial of Other Treatments; Titration. (1) Controlled substances shall only be utilized on a long-term basis after other appropriate non-controlled therapies have been attempted and have proven unsuccessful in appropriately treating the medical complaint and related symptoms. If controlled substances are utilized on a long-term basis, the physician shall prescribe or dispense controlled substances at the lowest level and for the shortest duration necessary to appropriately treat the medical complaint and related symptoms;

(2) The physician shall initially attempt, to the extent possible, or to establish and document a previous attempt by another physician, in increasing order, the following steps to treat the medical complaint and related symptoms:

(a) Use of physical therapy modalities alone or use of non-steroidal anti-inflammatory medication alone;

(b) Use of physical therapy modalities in conjunction with non-steroidal anti-inflammatory medication;

(c) Use of lowest level of controlled substances considered effective to treat the medical complaint and related symptoms, as part of an opioid trial; and,

(d) Titration of levels of controlled substances in measured steps until the level of controlled substances adequately treats the medical complaint and related symptoms.

Section 4. Professional Standards for Long-Term Prescribing or Dispensing of Controlled Substances. If a physician continues to prescribe or dispense controlled substances beyond three (3) months for a specific medical complaint and related symptoms, the

physician shall comply with the following mandatory professional standards:

Patient Visits. (1) The physician shall personally see the patient at least once a month initially for evaluation and review of progress. The physician may see the patient less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

(a) The controlled substances prescribed or dispensed have been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

(b) The controlled substances prescribed or dispensed are not causing harmful side effect; and,

(c) There is sufficient monitoring in place to ensure that the patient will not use the controlled substances in an improper or inappropriate manner or divert them for an improper or inappropriate use.

(2) At each patient visit, the physician shall obtain a current history from the patient, shall conduct a focused physical examination, and shall perform appropriate measurable examinations as indicated in the treatment plan. The physician shall document all relevant information into the patient's medical record;

(3) At each patient visit, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained during that encounter to determine whether there has been functional improvement or any change in baseline measures. If appropriate, the physician shall modify the diagnosis or treatment plan, or both, as appropriate. The reasons for any modification shall be documented in the patient's medical record.

Reviewing Functional Goals; Specialty Consultations. (1) The physician shall regularly review and determine whether the patient is exhibiting improved function, by meeting treatment goals jointly set, and is responding favorably to the medical treatment, including controlled substance therapy;

(2) For patients presenting a significant risk of diversion or improper use of controlled substances, the physician shall obtain the patient's consent to discuss the patient's treatment with independent sources, including family members, in order to verify:

(a) The patient's progress toward or achievement of treatment goals; and,

(b) The patient's use of controlled substances and any side effects of that use, through independent sources;

(3) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with controlled substances, the physician shall obtain consultative assistance to determine whether there are undiagnosed conditions that must be addressed to resolve the medical complaint, such as psychiatry, neurology, internal medicine, physical medicine and rehabilitation, orthopedics, addiction medicine, rheumatology, or oncology;

(4) For patients exhibiting symptoms suggestive of mood, anxiety and/or psychotic disorders, the physician shall obtain psychiatric or psychological consultations for intervention if such condition is affecting treatment;

Managing Breakthrough Pain. (1) If a patient reports that they are experiencing episodes of "breakthrough" pain, the physician shall:

(a) Attempt to identify the trigger or triggers for such episodes;

(b) Determine whether the breakthrough pain may be adequately treated through non-controlled treatment;

(c) If the episodes continue and the non-medication treatments do not adequately address the triggers, and after considering the risks and benefits, the physician determines to add an as-needed controlled substance to the regimen, the physician must take appropriate steps to minimize the improper or illegal use of the additional controlled substances by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period. The physician shall also include appropriate monitoring of the additional controlled substance;

Preventive Medicine. (1) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition. The physician shall ensure that the patient is provided

treatment appropriate to the findings and results of such screening. The physician shall document in the patient's medical record the annual preventive health screening performed or the results of the screening performed by the primary treating physician, the findings and results, and the treatment provided, if any;

Periodic KASPER Reviews and Monitoring Adherence. (1) At least once every three months, the physician shall obtain and review a current KASPER report to ensure that the patient is properly filling the prescriptions issued and that the patient is not obtaining controlled substances from other practitioners without the physician's knowledge and approval;

(2) If, at any time while the physician is prescribing or dispensing controlled substances to a patient, the physician obtains or receives specific information that the patient is not taking the controlled substances as directed, is diverting controlled substances, or is engaged in any improper or illegal use of controlled substances, the physician shall immediately obtain and review a KASPER report for the purposes specified in subsection (1), supra;

(3) If a KASPER report discloses that the patient is not filling the controlled substance prescriptions as directed or is obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall immediately address those issues with the patient. The physician shall not prescribe or dispense any more controlled substances unless the physician has addressed the issues with the patient and has determined that it is medically appropriate and safe to continue prescribing or dispensing controlled substances to the patient;

(4) If a KASPER report discloses that the patient is obtaining controlled substances from other practitioners without the physician's knowledge and approval, the physician shall promptly notify the appropriate law enforcement agency and the other practitioners of the relevant information from the KASPER review;

(5) The physician shall document in the patient's medical record each time a KASPER review is performed, information obtained; and, if applicable, the patient's account of any irregularities noted in the review; and, the physician's determination of what actually occurred;

(6) If the physician should determine that it is medically appropriate and safe to continue or resume prescribing or dispensing controlled substances to the patient after assessing their failure to fill prescriptions as directed or their obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall fully document in the patient's medical record the physician's rationale for resuming such prescribing or dispensing, to include an analysis of the risks and benefits of that decision, along with the increased monitoring or oversight measures being put into place to ensure controlled substances are not illegally diverted or used;

(7) The physician shall obtain consultative assistance from a specialist when appropriate.

Random Pill Counts. (1) When appropriate, the physician shall conduct unannounced random pill counts to determine whether the patient is taking the controlled substances as directed;

(2) If the physician discovers irregularity in the pill count, the physician shall immediately address those findings with the patient. The physician must use all available information, including a discussion with the patient, to determine whether the patient is illegally diverting controlled substances;

(3) If the physician determines that the patient has diverted controlled substances, the physician should immediately discontinue the prescribing or dispensing of controlled substances to that patient, if medically feasible. If it is not medically feasible to immediately discontinue the prescribing or dispensing of controlled substances, the physician shall immediately begin a tapering process to safely discontinue prescribing or dispensing controlled substances, after putting in place specific protections that will ensure that no further diversion occurs, such as requiring storage and administration of the controlled substances to the patient by a person designated by the physician, with additional random pill counts;

(4) The physician shall fully document the results of each pill count conducted, the physician's determination of the reasons for any shortage, and the physician's decisions regarding continued treatment, in the patient's medical record.

Urine Drug Screens. (1) During the course of long-term prescribing or dispensing of controlled substances, the physician shall utilize urine drug screens in a random manner at appropriate times to determine whether the patient is taking prescribed medications or taking illegal substances or medications not prescribed by the physician.

(2) If the patient tested negative for controlled substances prescribed or dispensed by the physician and confirmatory testing substantiates a "red flag," the physician shall do one of the following:

- (a) Do a controlled taper;
 - (b) Stop prescribing or dispensing controlled substances immediately; or,
 - (c) Refer the patient to an addiction specialist or drug treatment program, depending upon the circumstances.
- (3) The physician shall discontinue controlled substance treatment and/or refer the patient to addiction management if one or more of the following conditions exist:
- (a) There has been no improvement in function and response to the medical complaint and related symptoms;
 - (b) Controlled substance therapy has produced significant adverse effects; and/or
 - (c) The patient exhibits drug-seeking behavior or diversion.

Section 5. Professional Standards for Prescribing or Dispensing Controlled Substances in an Emergency Department Setting. The following professional standards apply to physicians who prescribe or dispense controlled substances in an emergency department setting:

(1) Before prescribing or dispensing a controlled substance in an emergency department setting, the physician shall:

- (a) Obtain an appropriate medical history relevant to the medical complaint and conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record;
- (b) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record, and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. If the physician cannot obtain a KASPER report for review in sufficient time to make the determination whether to prescribe or dispense controlled substances, the physician shall not prescribe or dispense controlled substances unless demonstrated and documented in the patient's medical record that the medical necessity for and safety in prescribing or dispensing the controlled substance substantially outweigh the risk of unlawful use or diversion of the controlled substances, particularly considering the nature and severity of the patient's presenting complaint;
- (c) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified, and document that decision in the patient's record and, if appropriate, the reasoning underlying that decision.

(2) The physician is strongly discouraged from and shall not routinely:

- (a) Administer intravenous and/or intramuscular controlled substances for the relief of acute exacerbations of chronic pain;
- (b) Provide replacement prescriptions for controlled substances that were lost, destroyed, or stolen;
- (c) Provide replacement doses of methadone, suboxone, or subutex for patients in a treatment program;
- (d) Prescribe long-acting or controlled-release controlled substances, such as OxyContin, fentanyl patches, or methadone or replacement doses of such medications;
- (e) Administer Demerol (Meperidine) to the patient;
- (f) Prescribe or dispense more than a three (3) day supply of controlled substances, with no refills.

(3) If the physician determines that exceptional circumstances exist which warrant prescribing or dispensing controlled substances in a manner that is strongly discouraged in Section 2(1), supra, the physician shall document in the patient's medical record the exceptional circumstances that warranted such prescribing or

dispensing.

(4) The physician shall ensure that each patient receiving controlled substances by dispensing or prescription is given is informed, by handout or display signage, of the standards established in this regulation regarding the prescribing or dispensing of controlled substances.

(5) These standards shall not apply or be enforced during periods involving disaster, mass casualties, or extreme emergency.

Section 6. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician shall document all relevant information in a patient's medical record in a legible manner and in sufficient detail to provide for:

- (a) Meaningful diagnosis and treatment of the patient;
- (b) The safe and medically appropriate assumption of care by another physician at any given time; and,
- (c) This board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards. Such information includes, but is not limited to:
 - (a) Medical history and physical examinations;
 - (b) Diagnostic and laboratory test results and therapeutic outcomes;
 - (c) Evaluations and consultations;
 - (d) Records of past treatment outcomes including indicators of benefits, such as functional outcomes, and indicators of risk, such as adverse effects;
 - (e) Medications (including date prescribed, type, dosage, strength and quantity);
 - (f) Intensity levels of medical complaint and related symptoms;
 - (g) Subjective complaints of the patient;
 - (h) Objective findings related to subjective complaints, including impact on functioning and quality of life;
 - (i) Diagnostic impressions, and potential treatment options;
 - (j) Treatment objectives;
 - (k) Discussion of risks and benefits;
 - (l) Informed consent;
 - (m) Instructions and agreements; and
 - (n) Periodic review of treatments, including adverse effects, functional goals, and any other outcomes that reflect benefits or problems with the treatment.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances, to the professional standards established by KRS 218A.172, or to other professional standards, due to circumstances beyond their control, the physician shall appropriately document such circumstances and the physician's response to the inability to conform to the specific standards and the impact upon the continuing care of the patient.

Section 7. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) It is the acceptable and prevailing medical practice within the Commonwealth of Kentucky for physicians prescribing or dispensing controlled substances to educate patients receiving controlled substances about the following subjects through verbal or written counseling:

- (a) Proper use;
- (b) Impact upon driving and work safety;
- (c) Effect of use during pregnancy;
- (d) Potential for overdose and appropriate response to overdose;
- (e) Safe storage of controlled substances;
- (f) Proper disposal;

(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov, and are incorporated by reference into this provision.

Section 8. Violations. (1) Any violation of the professional standards established in this regulation or in KRS 218A.172 shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions pursuant to KRS 311.595;

(2) Each violation of the professional standards established in this regulation or in KRS 218A.172 shall be established by expert

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testimony by one or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect every physician that prescribes and dispenses controlled substances in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 be required to follow the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having professional standards for prescribing and dispensing controlled substances to help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of

fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

201 KAR 9:310E

This emergency administrative regulation establishes the requirements of continuing medical education relating to the use of KASPER, pain management or addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky. In order to comply with HB 1 from the 2012 Special Session of the General Assembly, which requires the Kentucky Board of Medical Licensure to establish requirements of continuing medical education relating to the use of KASPER, pain management or addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky, it is necessary to promulgate this emergency administrative regulation. 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.

STEVEN L. BESHEAR, Governor

PRESTON P. NUNNELLEY, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (Emergency Amendment)

201 KAR 9:310E. Continuing medical education.

RELATES TO: KRS 214.610, 214.615, 214.620, 218A.205, 311.565(1)(b), 311.601

STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), 311.601(1), (2)

EFFECTIVE: July 20, 2012

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.601(1) authorizes the board to promulgate an administrative regulation that establishes requirements to ~~insure[ensure]~~ the continuing professional competency of licensees. The amendment of this administrative regulation establishes continuing medical education requirements relating to the use of KASPER, pain management, and addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

Section 1. Continuing Medical Education. A licensee shall submit, with his annual licensure renewal form, verification of satisfactory completion of a program of continuing medical education.

Section 2. In order to meet the continuing medical education requirements, a licensee shall:

- (1) Submit evidence that thirty (30) of the sixty (60) hours shall have been certified in Category I by an organization accredited by the: (a) Accreditation Council on Continuing Medical Education; or (b) The American Osteopathic Association;
- (2)(a) Submit evidence that the licensee has received the American Medical Association's "physician recognition award", or the American Osteopathic Association's "osteopathic physicians' recognition award"; and (b) Award is in effect at the time a license is renewed;
- (3) Submit verification that the:
 - (a) Licensee has completed continuing medical education requirements of any specialty organization which is recognized by the AMA or AOA as at least equivalent to their recognition awards; and
 - (b) Certification is in effect at the time a license is renewed; or
 - (4) Submit verification that the licensee is in, or has been in, an approved postgraduate training program.
- (5) Each year of postgraduate training shall be equivalent to fifty (50) hours of continuing medical education.

Section 3. Required Hours of Continuing Education. (1) For each three (3) year continuing education cycle, a licensee shall complete:

- (a) A total of sixty (60) hours of continuing medical education, if his license has been renewed for each year of a continuing medical education cycle.
 - (b) If his license has not been renewed for each year of a continuing medical education cycle, a licensee shall complete twenty (20) hours of continuing medical education for each year for which his license has been renewed.
 - (c) A licensee whose initial licensure was granted the first year of the continuing education cycle for which verification is submitted shall complete sixty (60) hours of continuing medical education before the end of the cycle;
 - (d) A licensee whose initial licensure was granted the second year of the continuing education cycle for which verification is submitted shall complete forty (40) hours of continuing medical education before the end of the cycle;
 - (e) A licensee whose initial licensure was granted the third year of the continuing education cycle for which verification is submitted shall complete twenty (20) hours of continuing medical education before the end of the cycle.
- (2) Upon renewal of licensure following the end of a three (3) year continuing education cycle, a licensee shall certify that he has met the continuing medical education requirements for the cycle as provided by this section.
- (3) Verification of completion of continuing medical education requirements shall be submitted upon request by the board.

Section 4. The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification.

Section 5. During each ten (10) year period of their practice, each licensee shall complete a minimum of two (2) hours of continuing medical education in HIV/AIDS courses approved pursuant to KRS 214.610, 214.615 and 214.620.

Section 6. (1) For each three (3) year continuing education cycle beginning on January 1, 2015, a licensee who is authorized to prescribe or dispense controlled substances within the Commonwealth at any time during that cycle shall complete at least four and one-half (4.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders or a combination of two (2) or more of those subjects. A licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for that cycle.

(2) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances within the Commonwealth during any portion of the three (3) year continuing education cycle beginning on January 1, 2012 and ending on December 31, 2014 shall complete at least four and one-half (4.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders or a combination of two (2) or more of those subjects on or before December 31, 2014. The physician may satisfy this requirement completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for this cycle.

(3) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky during any portion of calendar year 2014 shall complete at least one and one-half (1.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders or a combination of two (2) or more of those subjects on or before December 31, 2014, and shall submit written verification of compliance to the board on or before January 15, 2015.

(4) To qualify as approved continuing education under this section, the educational program must have been approved in advance for the specified number of continuing education hours by the board. The board may approve educational programs that consist of a live presentation, that are presented by live or recorded webinars, or that are presented through online modules. The board shall maintain a current listing of approved continuing education programs on its official Web site - www.kbml.ky.gov.

(5)(a) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee must complete the required number of continuing education hours for each period designated in this section.

(b) Failure to complete the required number of continuing education hours for the required period, or to submit the required written verification within the time specified shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(c) If the board determines that a licensee has failed to complete the required continuing education hours within the time specified or has failed to provide the written verification of completion within the time specified, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until such time as the licensee has completed the required continuing education hours for that period and has provided written verification of such completion to the board.

(d) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to paragraph (c) of this subsection shall remain valid and in effect until the board has received written verification that the licensee has successfully completed the required continuing education hours for the time period specified. Upon receipt of such written verification, the panel or its chair will immediately issue an order terminating the emergency order issued pursuant to this section.

(e) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with written notification on board letterhead stating that the board has not re-

ceived the required written verification that the licensee completed the required continuing education hours for the period specified by the time specified.

(6) If a licensee should prescribe or dispense controlled substances within the Commonwealth of Kentucky during any period after the licensee has failed to complete the required continuing education hours within the time specified or has failed to provide written verification of such completion within the time specified, each instance of prescribing or dispensing of such controlled substances shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and will serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 7.[6-] The board may randomly require physicians submitting certification of continuing medical education to demonstrate satisfactory completion of the continuing medical education requirements stated in his certification.

Section 8.[7-] (1) A licensee shall be fined a minimum of \$200 [dollars], if he fails to:

(a) Timely complete the continuing medical education requirements; and

(b) Obtain an extension of time for completion of the continuing medical education requirements.

(2)(a) A licensee subject to subsection (1) of this section shall be granted a period of six (6) months to come into compliance.

(b) If a licensee has not completed the continuing medical education requirements within the six (6) month period established by this subsection, his license shall:

1. Be immediately suspended; and

2. Remain suspended until he has submitted verifiable evidence that he has completed the continuing education requirements.

Section 9.[8-] A waiver of the requirements established by the provisions of this administrative regulation shall not be granted.

Section 10.[9-] Incorporation by Reference. (1) "Continuing Medical Education Certification Form" [3/97] is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, 8 a.m. to 4:30 p.m., Monday through Friday.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect physicians licensed in Kentucky who prescribe or dispense controlled substances.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky will have to obtain the appropriate number of continuing medical education hours specified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Approximate cost for each physician to obtain the required number of continuing medical education hours is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will be appropriately informed in the areas of KASPER use, pain management, and addiction disorders to curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.202.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 20:056E

The General Assembly, in the 2012 Special Session, passed House Bill 1 relating to controlled substances. Section 2(3) of the bill requires the Board of Nursing to promulgate administrative regulations on specific matters by September 1, 2012. House Bill 1 goes into effect on July 20, 2012. The Board of Nursing needs the authority to immediately implement the regulatory provisions since the ordinary administrative regulation will not be in effect earlier than November 2012. To meet the deadline of House Bill 1, an emergency administrative regulation is needed. In addition, immediate implementation of the provisions of House Bill 1 that are the responsibility of the Board of Nursing is needed due to the imminent threat to the public health, safety, and welfare posed by the prescription drug abuse problem in Kentucky. To protect the health of the citizens of the Commonwealth, this emergency administrative regulation is needed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 20, 2012.

STEVEN L. BESHEAR, Governor

CAROL KOMARA, President

GENERAL GOVERNMENT CABINET
Board of Nursing
(Emergency Amendment)

201 KAR 20:056E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 218A.205(3)(g)2, 314.011, 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(g)2, 314.042(7), 314.131(1), 314.470

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licen-

sure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensure requirements. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1) Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable;

(6) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (5)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(g)2 and any relevant data on the applicant is received.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b)1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by

a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of this section.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice consistent with the population focus required by and defined by KRS 314.011;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board on Certification and Recertification of Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection (2) of this section shall be deemed to meet the definition of population focus of KRS 314.011(20):

(a) Acute Care NP;

(b) Adult NP;

(c) Adult Psychiatric and Mental Health NP;

(d) Family NP;

(e) Family Psychiatric and Mental Health NP;

(f) Gerontological NP;

(g) Neonatal NP;

(h) Pediatric NP;

(i) Pediatric/Primary Care NP;

(j) Pediatric/Acute Care NP;

(k) Women's Health NP;

(l) Adult Health CNS;

(m) Adult Psychiatric and Mental Health CNS;

(n) Child and Adolescent Psychiatric and Mental Health CNS;

(o) Gerontological CNS;

(p) Pediatric CNS;

(q) Adult Acute Care CNS;

(r) Pediatric Acute Care CNS; and

(s) Neonatal Acute Care CNS.

(4) The board recognizes the Oncology Nursing Certification Corporation only for those individuals who received certification prior to the effective date of this administrative regulation and who have continually renewed their Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the

temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App."

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "Annual Licensure Renewal Application: RN and APRN" or a completed "Annual APRN Licensure Renewal Application for APRN with RN Compact License (not Kentucky)" form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed "Application for Licensure as an Advanced Practice Registered Nurse" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2)(a) A nurse who fails to attain current, active certification or

recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b) An APRN whose certification or recertification lapses prior to the expiration of the APRN license and who does not provide evidence of current certification or recertification after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed as an advanced practice registered nurse if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures set in KRS 314.091.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 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 out licensure procedures, program requirements, and recognizes certain national certifying organizations for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out procedures and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out procedures and requirements.

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

(a) How the amendment will change this existing administrative regulation: House Bill 1 (2012 Special Session) requires the Board

to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of obtaining information from the National Practitioner Data Bank (NPDB).

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By requiring the NPDB information for licensure.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN applicants for licensure, 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:

Under the amendment an APRN applicant will not have to take any action to comply. The Board will make the requisite query.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
201 KAR 20:057E**

The General Assembly, in the 2012 Special Session, passed House Bill 1 relating to controlled substances. Section 2(3) of the bill requires the Board of Nursing to promulgate administrative regulations on specific matters by September 1, 2012. House Bill 1 goes into effect on July 20, 2012. The Board of Nursing needs the authority to immediately implement the regulatory provisions since the ordinary administrative regulation will not be in effect earlier than November 2012. To meet the deadline of House Bill 1, an emergency administrative regulation is needed. In addition, immediate implementation of the provisions of House Bill 1 that are the responsibility of the Board of Nursing is needed due to the imminent threat to the public health, safety, and welfare posed by the prescription drug abuse problem in Kentucky. To protect the health of the citizens of the Commonwealth, this emergency administrative regulation is needed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 20, 2012.

STEVEN L. BESHEAR, Governor
CAROL KOMARA, President

**GENERAL GOVERNMENT CABINET
Board of Nursing
(Emergency Amendment)**

201 KAR 20:057E. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.042, 314.193(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.193(2)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)" means the written document pursuant to KRS 314.042(9).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing

Practice;

(2) Nursing: Scope and Standards of Practice;

(3) Scope and Standards for Nurse Anesthesia Practice;

(4) Standards for Office-based Anesthesia Practice;

(5) Standards for the Practice of Midwifery;

(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(7) Pediatric Nursing: Scope and Standards of Practice;

(8) Standards of Practice for Nurse Practitioners;

(9) Scope of Practice for Nurse Practitioners;

(10) Scope and Standards of Practice for the Acute Care Nurse Practitioner;

(11) Neonatal Nursing: Scope and Standards of Practice;

(12) Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice; and

(13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the APRN shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of the registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of the DEA Controlled Substance Registration Certificate number shall be reported to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by 201 KAR Chapter 20.

Section 9. Prescribing Standards for Controlled Substances.

(1)(a) This section shall apply to an APRN with a CAPA-CS when prescribing a controlled substance listed in subsection (7) of this section.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.

(2) The APRN shall, prior to initially prescribing a controlled

substance listed in subsection (7) of this section, for a patient:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, including potential discontinuation of the use of controlled substances.

(4) For subsequent prescriptions of a controlled substance listed in subsection (7) of this section, the APRN shall:

(a) Obtain necessary updates to the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as necessary; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance.

(6) This section shall not apply to:

(a) Administering a controlled substance or anesthesia immediately prior to or during surgery;

(b) Administering a controlled substance necessary to treat a patient in an emergency situation:

1. At the scene of an emergency; or

2. In a licensed ground or air ambulance;

(c) Prescribing a controlled substance for a hospice patient when functioning within the scope of a hospice program or hospice inpatient unit licensed under KRS Chapter 216B;

(d) A patient admitted to a licensed hospital, during and as part of the patient's normal and expected course of admission at that hospital;

(e) A patient who is a registered resident of a skilled long term care facility; or

(f) Prescribing a controlled substance for a patient receiving palliative care.

(7) This section shall only apply to the following controlled substances:

(a) Ambien;

(b) Anorexics;

(c) Ativan;

(d) Klonopin;

(e) Librium;

(f) Nubain;

(g) Oxazepam;

(h) Phentermine;

(i) Soma;

(j) Stadol;

(k) Stadol NS;

(l) Tramadol;

(m) Valium;

(n) Versed; and

(o) Xanax.

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

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2007 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice", 2010 Edition, American Nurses' Association;

(c) "Standards for Office-based Anesthesia Practice", 2010 Edition, American Association of Nurse Anesthetists;

(d) "Scope and Standards for Nurse Anesthesia Practice", 2010 Edition, American Association of Nurse Anesthetists;

(e) "Standards for the Practice of Midwifery", 2009 Edition, American College of Nurse-midwives;

(f) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2008 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition, National Association of Pediatric Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2010 Edition, American Academy of Nurse Practitioners;

(i) "Scope of Practice for Nurse Practitioners", 2010 Edition, American Academy of Nurse Practitioners;

(j) "Scope and Standards of Practice for the Acute Care Nurse Practitioner", 2006 Edition, American Association of Critical Care Nurses;

(k) "Neonatal Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses Association/National Association of Neonatal Nurses;

(l) "Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice", 2010 Edition, American Association of Critical-Care Nurses;

(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society; and

(n) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 6/2010, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 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 out the scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out 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: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of setting prescribing standards for controlled substances. In addition, the amendment requires APRNs to report their DEA number to the Board. This will assist the Board in obtaining KASPER reports when needed.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By setting prescribing standards.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute. Also, the Board will have necessary information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers, presently

there are approximately 1500.

(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 report DEA numbers to the Board. In addition, they will have to follow controlled substance prescribing standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 201 KAR 20:161E

The General Assembly, in the 2012 Special Session, passed House Bill 1 relating to controlled substances. Section 2(3) of the bill requires the Board of Nursing to promulgate administrative

regulations on specific matters by September 1, 2012. House Bill 1 goes into effect on July 20, 2012. The Board of Nursing needs the authority to immediately implement the regulatory provisions since the ordinary administrative regulation will not be in effect earlier than November 2012. To meet the deadline of House Bill 1, an emergency administrative regulation is needed. In addition, immediate implementation of the provisions of House Bill 1 that are the responsibility of the Board of Nursing is needed due to the imminent threat to the public health, safety, and welfare posed by the prescription drug abuse problem in Kentucky. To protect the health of the citizens of the Commonwealth, this emergency administrative regulation is needed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 20, 2012.

STEVEN L. BESHEAR, Governor

CAROL KOMARA, President

GENERAL GOVERNMENT CABINET Board of Nursing (Emergency Amendment)

201 KAR 20:161E. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 218A.205, 314.011(13), 314.031, 314.071(4), 314.091, 314.107, 314.470, 314.991(3)

STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are determined to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint sets forth a potential violation or the conduct falls within the statutory instances which must be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5)(a) A complaint shall be evaluated to determine if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.470. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the com-

plaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

(7)(a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;
2. The Office of the Attorney General; and
3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be determined that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107.

(c) Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that insure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky

without a temporary work permit, multistate licensure privilege pursuant to KRS 314.470, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Cured noncompliance with continuing education requirements, as set forth in 201 KAR 20:215, Section 3;

5. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months;

6. Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a chemical dependency evaluation that does not indicate a diagnosis of chemical dependency;

7. Failed to report a criminal conviction or disciplinary action in another jurisdiction on an application; or

8. Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

(6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).

(a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.

(b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe controlled substances suspended for at least three (3) months and as further restricted as determined by the board.

(c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.

(d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.

(e) Cases that come under KRS 314.011(21)(c) shall not be considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was

made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

- (1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform.
- (2) Requiring the individual have continuous, direct, on-site supervision by a licensed nurse, physician, or dentist.
- (3) Specifying the individual's practice setting.
- (4) Specifying the types of patients to whom the individual may give nursing care.
- (5) Requiring the individual to notify the board in writing of a change in name, address, or employment.
- (6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements set by the board.
- (7) Requiring the individual to submit to the board evidence of physical or chemical dependency, mental health evaluations, counseling, therapy, or drug screens.
- (8) Meeting with representatives of the board.
- (9) Issuing the license or temporary work permit for a specified period of time.
- (10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions.
- (11) Requiring the individual to be employed as a nurse for a specified period of time.
- (12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint so long as the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 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 out the procedures for the investigation and disposition of complaints against nurses.

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out 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: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of an expedited review of certain complaints involving APRN controlled substance prescriptions, the consequences of criminal

convictions involving controlled substances on APRNs, acceptance of anonymous complaints, and submission of all disciplinary actions to the National Practitioner Data Bank.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By dealing with the specific actions required by House Bill 1.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers who may have complaints against them, 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: The amendment does not place any new responsibilities on the APRN. It affects how the Board handles certain complaints.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: It is impossible to determine what costs would be involved. Each complaint involves a unique factual situation and requires an investigation.

(b) On a continuing basis: It is impossible to determine any additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administration.

(d) How much will it cost to administer this program for subse-

quent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY **201 KAR 20:215E**

The General Assembly, in the 2012 Special Session, passed House Bill 1 relating to controlled substances. Section 2(3) of the bill requires the Board of Nursing to promulgate administrative regulations on specific matters by September 1, 2012. House Bill 1 goes into effect on July 20, 2012. The Board of Nursing needs the authority to immediately implement the regulatory provisions since the ordinary administrative regulation will not be in effect earlier than November 2012. To meet the deadline of House Bill 1, an emergency administrative regulation is needed. In addition, immediate implementation of the provisions of House Bill 1 that are the responsibility of the Board of Nursing is needed due to the imminent threat to the public health, safety, and welfare posed by the prescription drug abuse problem in Kentucky. To protect the health of the citizens of the Commonwealth, this emergency administrative regulation is needed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 20, 2012.

STEVEN L. BESHEAR, Governor

CAROL KOMARA, President

GENERAL GOVERNMENT CABINET **Board of Nursing** **(Emergency Amendment)**

201 KAR 20:215E. Continuing competency requirements.

RELATES TO: KRS 218A.205(3)(h), 314.011(12), 314.073, 314.991(1)-(3)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 314.073, 314.131(1), (2)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means an experienced and competent nurse who assumes responsibility to assist with the clinical practice experience of a nursing student or new employee by serving as a role model, teacher, and resource.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation are as follows:

(1) Fourteen (14) contact hours of continuing education which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period; and

(b) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the licensure period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire licensure period; or

(c) Have been recertified during the licensure period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior, and that is evidenced by an abstract of the project which includes a summary of the findings;

(b) Publication of a nursing-related article;

(c) A nursing continuing education presentation that is:

1. A presentation that is designed and developed by the presenter;

2. Presented to nurses or other health professionals; and

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering;

(d) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one-to-one relationship between the preceptor and the student or employee.

3. The preceptor may precept more than one (1) student or employee during the 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The evaluation shall:

1. Cover a period of at least six (6) months during the earning period;

2. Be signed by the nurse's supervisor; and

3. Include the name, address and telephone number of the employer.

(5) A nurse who renews a license for the first time following graduation from a prelicensure program of nursing shall utilize the following methods for continuing competency validation:

(a) If employed, either

1. The provisions of subsection (4) of this section or,

2. The provisions of subsection (4)(a) of this section and documentation of the nurse's completion of an orientation to the employer; or

(b) If not employed or is unable to provide proof of an orientation or an evaluation, the provisions of subsection (1) of this section.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS educa-

tion:

(a) Approved by the Cabinet for Health and Family Services pursuant to KRS 214.610; or

(b) Offered by a provider approved pursuant to 201 KAR 20:220.

(c) These contact hours shall be earned at least one (1) time every ten (10) years.

(2)(a) Advanced practice registered nurses shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(3) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(4)(a) Registered nurses and licensed practical nurses licensed as of July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(7) by December 31, 2013.

(b) Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(7) within three (3) years of licensure.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period, except for HIV/AIDS education records which shall be maintained for twelve (12) years.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with the continuing competency requirements, he shall be allowed to cure the noncompliance if he:

1. Meets the continuing competency requirements within ninety (90) days of notification of noncompliance;
2. Enters a consent decree with the board; and
3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or
2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat a continuing education offering within a licensure period.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection 3 of this section.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall

equal fifteen (15) contact hours; or

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.

(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 8. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an "Application for Individual Review"; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards established by:

- (a) Sections 2 through 7 of this administrative regulation; and
- (b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 9. Incorporation by Reference. (1) "Application for Individual Review", 9/2005, Kentucky Board of Nursing, is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 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 out the requirements for continuing competency for nurses.

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out requirements.

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

(a) How the amendment will change this existing administrative regulation: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of certain continuing education for APRNs who prescribe controlled substances. Presently, APRNs are required to have five

hours of continuing education each year on pharmacology. The amendment requires APRNs who prescribe controlled substances to have at least one and one-half (1.5) hours of the five on the mandated topics.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By setting the continuing education requirement.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers, presently there are approximately 1500.

(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 affected APRNs will have to earn the mandated continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It would be anticipated that the continuing education provider may charge for the class.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Statement of Emergency 201 KAR 25:011E

This emergency administrative regulation establishes the standards for prescribing or dispensing controlled substances by licensed as a podiatrist in the Commonwealth. This emergency administrative regulation must be placed into effect immediately to meet the mandate of 2012 (1st Extra. Sess.) Ky. Acts ch. 1 and to protect the public health and safety from the impacts of improperly prescribed controlled substances. To that end, the standards for prescribing and dispensing of controlled substances are set forth by this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on July 20, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT LEVINE, DPM, President

GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (Emergency Amendment)

201 KAR 25:011E. Approved schools; examination application; fees.

RELATES TO: KRS 218A.205, 311.420

STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board approves the following schools or colleges of podiatry as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida.

(b) California College of Podiatric Medicine, San Francisco, California.

(c) College of Podiatric Medicine and Surgery, Des Moines, Iowa.

(d) Dr. William M. Scholl College of Podiatric Medicine, Chicago, Illinois.

(e) New York College of Podiatric Medicine, New York, New York.

(f) Ohio College of Podiatric Medicine, Cleveland, Ohio.

(g) Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania.

(h) Arizona Podiatric Medicine Program at Midwestern University, Glendale, Arizona.

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges

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es listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has filed an application for a license with the board.

Section 2. (1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed Application for Examination[application] with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant.

(3) The fee for the examination or reexamination shall be \$250 and shall be paid when the application for examination or reexamination is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

Section 3. (1) Prior to approval for examination, an applicant shall:

(a) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation;

(b) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services; and

(c) Report to the board, with the Application for Examination, any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 4. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the Board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

Section 5. Requirements for a person issued a license by the board. (1) A person who has been approved for a license from the board shall register with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services within a reasonable time after issuance of the license and immediately submit proof of the registration to the board.

(2) In no circumstance shall a person who has received a license from the board prescribe any controlled substance before he or she is registered with KASPER.

(3) The board shall temporarily suspend a license under 201 KAR 23:051, Section 5, if an individual has:

(a) Failed to register with KASPER in a reasonable time after the approval for licensure by the board or prescribed a controlled substance prior to registration with KASPER.

(b) In addition to temporary suspension, the board may take additional disciplinary action against a license under KRS 311.480.

Section 6. Incorporation by Reference. (1) "Application for Examination", [§1994,] is incorporated by reference.

(2) This material[§] may be inspected, copied, or obtained,

subject to applicable copyright law, at the Kentucky State Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174[908B-S-12th Street, Murray, Kentucky 42071-2947], Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at noon

CONTACT PERSON: Beverley White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for obtaining a license from the board.

(b) The necessity of this administrative regulation: KRS 311.420 requires all persons engaging in the practice of podiatry to be licensed by the board and to submit to examination by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with KASPER. KRS 218A.205 requires the board to place restrictions on licensees and applications that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged and the procedures to be followed in obtaining a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 authorizes the board to license applicants. KRS 218A.202 authorizes the board to promulgate regulations for registration with KASPER. KRS 218A.205 mandates the placement of restrictions on licensees in certain circumstances.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for persons seeking licensure by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the procedures to be followed in the application process regarding criminal background checks and the restrictions when an applicant has been convicted or disciplined for matters related to controlled substances. It also requires a person seeking licensure from the board to register with KASPER.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures to be followed in the application process including criminal background checks, restrictions on licensees, and registration with KASPER.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license in the Commonwealth annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons seeking licensure from the board will have to submit to a criminal background check. If they have been convicted of certain crimes, a restriction will be placed on the license in accordance with the mandates of House Bill 1. Persons licensed by the board shall be registered with KASPER.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost for each of the entities identified in question (3): The costs for submitting to a nation-wide criminal background check and registering with KASPER are not set by the board. It is anticipated that the costs will be under \$100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be licensed by the board in accordance with the law.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons seeking licensure by the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.202; 218A.205; 311.410; 311.420.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

Statement of Emergency 201 KAR 25:021E

This emergency regulation establishes the procedures for renewing a license as a podiatrist in the Commonwealth. This emergency administrative regulation must be placed into effect immediately to meet the mandate of 2012 (1st Extra. Sess.) Ky. Acts ch. 1 and to protect the public health and safety from the impacts of improperly prescribed controlled substances. To that end, this emergency administrative regulation includes the KASPER registration requirements and restrictions for persons with certain convictions and disciplinary actions as mandated by law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on July 20, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT LEVINE, DPM, President

GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (Emergency Amendment)

201 KAR 25:021E. Annual renewal ~~of~~[notice for] licenses, fees.

RELATES TO: KRS 218A.205, 311.450

STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450 requires the board to send notices to all podiatrists licensed by the board to their last known address on or before June 1 of each year. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation requires all licensed podiatrists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

Section 1. (1) The annual renewal fee, in the amount of \$150 shall be attached to the completed annual renewal notice when the notice is returned to the board by the podiatrist seeking licensure renewal.

(2) The annual renewal fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check,~~or~~ postal money order, personal check, or credit card.

(3) All information requested on the annual renewal notice form shall be furnished to the board when the completed annual renewal notice form is returned to the board, together with a statement of compliance with the continuing education administrative regulations of the board.

(4) Every renewal application shall include proof of registration with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services.

Section 2. (1) Failure to complete the requirements for annual renewal of the license by July 1 of each year shall result in a delinquent penalty fee of \$100.

(2) A licensee shall immediately report to the board any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 3. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on a application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the Board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

ROBERT LEVINE, DPM, President
APPROVED BY AGENCY: July 17, 2012

VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012

FILED WITH LRC: July 20, 2012 at noon

CONTACT PERSON: Beverley White, Executive Director,
Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky
42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements for renewing a license with the board.

(b) The necessity of this administrative regulation: KRS 311.450 requires annual renewal of licenses with the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with KASPER. KRS 218A.205 requires the board to place restrictions on licensees and applications that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in renewing a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 authorizes the board to license applicants. KRS 218A.202 authorizes the board to promulgate regulations for registration with KASPER. KRS 218A.205 mandates the placement of restrictions on licensees in certain circumstances.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for persons seeking renewal of licensure by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the procedures to be followed in the renewal process regarding criminal background checks and the restrictions when an applicant has been convicted or disciplined for matters related to controlled substances. It also requires a person seeking licensure from the board to register with KASPER.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures to be followed in the renewal process including criminal background checks, restrictions on licensees, and registration with KASPER.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the renewal process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons renewing licensure will have a restriction placed on the license in accordance with the mandates of House Bill 1. Persons licensed by the board shall show that they have registered with KASPER.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for registering with KASPER are not set by the board. It is anticipated that the costs will be under \$100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be licensed by the board in accordance with the law.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons renewing a license with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.202; 218A.205; 311.410; 311.420.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

Statement of Emergency 201 KAR 25:031E

This emergency administrative regulation establishes the continuing education requirements for renewing a license as a podiatrist in the Commonwealth. This emergency administrative regulation must be placed into effect immediately to meet the mandate of 2012 (1st Extra. Sess.) Ky. Acts ch. 1 and to protect the public health and safety from the impacts of improperly prescribed controlled substances. To that end, this emergency administrative regulation includes the continuing education requirements for KASPER as set forth in KRS 218.205. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on July 20, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT LEVINE, DPM, President

GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (Emergency Amendment)

201 KAR 25:031E. Continuing education.

RELATES TO: KRS 218A.205, 311.450(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 311.410(4),

311.450(2)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. KRS 218A.205(3)(h) requires the board to mandate continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) hours shall include:

(a) At least fifteen (15) Category A continuing education hours; and

(b) Not more than five (5) Category B continuing education hours.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

(4)(a) Beginning on July 1, 2012, and annually thereafter, each podiatrist licensed by the board shall complete at least one and one-half (1.5) hours of continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(b) This requirement shall be included in the twenty (20) hours of continuing education required by this administrative regulation.

Section 2. Categories of Continuing Education Hours. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall:

(a) Be earned by attendance at:

1. A professional seminar, including the Kentucky Podiatric Medical Association's annual conference;

2. An accredited school of podiatry continuing education program; or

3. Another program approved by the board under Section 6 of this administrative regulation; and

(b) Be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME), except if the course provider or the licensee that intends to take a course has requested and received board approval of the course under Section 6 of this administrative regulation prior to the course's presentation.

(2) A Category B continuing education hour shall relate to non-podiatric medical issues or general practice issues and shall be earned by attendance at or participation in:

(a) Home study courses;

(b) Hospital, clinic, or in-house staff lectures; or

(c) Local or regional medical society or medical association meetings.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years, except for the continuing education records related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) years; and

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request; and

(d) For Category A programs, include proof of APMA/CPME certification or a written letter of approval from the board.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall

result in suspension or revocation of the license.

(4) Every ten (10) years, each licensed podiatrist shall successfully complete two (2) hours of continuing education which:

(a) Complies with the requirements of KRS 214.610(1); and

(b) Is approved by:

1. The Kentucky Cabinet for Health and Family Services as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome; or

2. The board.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; or

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding the license; and

(b) Accompanied by a document verifying the illness or disability signed by the:

1. Licensee's personal physician; or

2. Immediate family member's personal physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status shall be permitted to use the term "podiatrist" but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking relicensure from inactive to active status shall fulfill the following requirements:

(a) If the licensee has been inactive for no more than five (5) consecutive years, he shall:

1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application and requesting in writing that the license be made active;

2. Have completed twenty (20) hours of Category A continuing education requirements within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 3(4) of this administrative regulation; and

3. Pay:

a. The renewal fee of \$150 established in 201 KAR 25:021, Section 1; and

b. A reactivation fee of \$100.

(b) If a licensee has been in inactive status for more than five (5) consecutive years, he shall:

1. File a completed Application for Examination in accordance with 201 KAR 25:011 and pay the required fee;

2. Be approved by the board to take the examination; and

3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:

(a) A brief summary of the continuing education;

(b) The educational objectives of the continuing education;

(c) The date, time, and place of the provision of the continuing

education;

(d) The name and credentials of the individual providing the continuing education; and

(e) The name of the organization providing the continuing education, if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:

(a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;

(b) Is developed and provided by an individual with knowledge and experience in the subject area; and

(c) Contributes directly to the professional competence of a licensee.

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

(a) "Application for Examination", 4/00; and

(b) "License Renewal Application", 1/02.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174[908B-S, 12th Street, Murray, Kentucky 42071-2947], Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at noon

CONTACT PERSON: Beverley White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174; Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for renewing a license with the board.

(b) The necessity of this administrative regulation: KRS 218A.205 requires licensees to acquire continuing education on the use of KASPER. This administrative regulation establishes the procedures to be followed in renewing a license and obtaining continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.450 authorizes the board to require continuing education. KRS 218A.205, as enacted by General Assembly in 2012 (1st Extra. Sess.) Ky. Acts ch. 1, requires the board to mandate continuing education on the use of KASPER.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for continuing education for licensees seeking renewal of licensure by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the requirement for continuing education on the use of KASPER.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for continuing education on the use of KASPER.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the renewal process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons renewing licensure will be required to obtain continuing education on the use of KASPER.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for obtaining continuing education on the use of KASPER are not set by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons will receive updated information in accordance with the law.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons renewing a license with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.205; 311.410; 311.450.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

Statement of Emergency 201 KAR 25:051E

This emergency administrative regulation establishes the procedures that the board follows when a complaint has been filed against a person licensed as a podiatrist in the Commonwealth. This emergency administrative regulation must be placed into effect immediately to meet the mandate of 2012 (1st Extra. Sess.) Ky. Acts ch. 1 and to protect the public health and safety from the impacts of improperly prescribed controlled substances. To that end, the temporary suspension and complaint requirements of KRS 218.205 are set forth in this administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regula-

tion will be filed with the Regulations Compiler on July 20, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT LEVINE, DPM, President

**GENERAL GOVERNMENT CABINET
Kentucky Board of Podiatry
(Emergency Amendment)**

201 KAR 25:051E. Procedure for complaints and hearings involving licensees: temporary suspension.

RELATES TO: KRS 218A.205, 311.490

STATUTORY AUTHORITY: KRS 218A.205(3), 311.410(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.410 authorizes the board to promulgate administrative regulations that are necessary to implement the provisions of KRS 311.390 to 311.510. KRS 218A.205(3)(c) requires the board to establish a procedure for temporarily suspending, limiting, or restricting a license. KRS 218A.205(3)(d) requires the board to establish a procedure for the expedited review of complaints pertaining to improper prescribing or dispensing of controlled substances. This administrative regulation establishes [To establish] the administrative adjudication procedure for all proceedings before the board.

Section 1. Scope and Definitions. (1) This[These] administrative regulation governs[regulations govern] the procedure for the Kentucky State Board of Podiatry in all proceedings before the board in which the legal rights, duties, or privileges of any person is required by statute or by these administrative regulations to be determined after an opportunity for a hearing.

(2) The following definitions shall apply for purposes of administrative adjudicatory procedure unless the context otherwise requires:

(a) "Party" means any person or agency named or admitted as a party to any proceedings of the board and shall include only persons who have a real interest in a matter before the board.

(b) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(c) "Order" means the whole or any part of a final disposition of an adjudication.

(d) "Contested case" means an adjudicatory proceeding before the board in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the board or by some other person.

(e) "Board" means the Kentucky State Board of Podiatry.

(f) "Complaint review committee" means a committee of the board members appointed by the board that:

1. Reviews an initiating complaint;

2. Determines whether an investigation should be conducted;

and

3. Directs and reviews an investigation of the respondent.

(g) "Respondent" means the licensee against whom a complaint has been filed.

Section 2. Complaints and Investigations. (1) Complaints. A complaint may be made by the board or any person against the holder of a license by the filing of written charges with the board's offices.

(a) The board may require the complainant to make the complaint on a printed complaint form provided by the board.

(b) The complaint shall contain a clear and concise description of the issues of fact.

(2) The board shall accept an anonymous complaint if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint or grievance is meritorious.

Section 3. Complaints. (1) A complaint shall contain:

(a) The name phone number, and address of the person making the charge and the name and address of the place of business of the person or persons against whom charges are made; and

(b) A clear and concise description of the issues of fact.

(2) (a) Upon receipt of a complaint against a licensee, the board shall send a copy of the complaint to the licensee for a response.

(b) 1. The complaint shall be sent to the last known address of the licensee that the board has on file.

2. The licensee shall file a response within twenty (20) days from the date of the board's letter and include with the response a copy of the relevant podiatric medical records.

(c) Upon receipt of the response or after the twenty (20) day period has passed without a response, the complaint review committee shall review the complaint and the licensee's response, if any, and make a recommendation to the board whether the nature and quality of the allegations warrant dismissal, further investigation or the initiation of a hearing.

(d) In making its determination, the board shall consider whether the charges if proven would warrant sanction by the board.

(e) If the complaint involves the improper, inappropriate, or illegal prescribing of controlled substances, the board shall proceed under Section 4(2) of this administrative regulation.

(3) The board may at any time proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its own investigation.

(4) The filing of formal charges shall require the affirmative vote of a majority of the board.

(5) (a) If the board finds that allegations against a licensee are insufficient for initiation of a formal disciplinary procedure, it shall dismiss the matter and notify all interested parties.

(b) If the board determines that disciplinary proceedings are appropriate, the board shall set the matter for hearing and shall notify the licensee of the charges against him and the time and place of the hearing in accordance with KRS Chapter 13B.

(c) The board is also entitled to resolve the matter informally through mediation or negotiation. Any agreed order reached through mediation or negotiation shall be approved by the board and signed by the individual who is the subject of the complaint, the individual's attorney, and the chair of the board.

Section 4. [Any complaint or charge filed with the board shall be forwarded to the licensee involved and the licensee shall be given twenty (20) days to resolve the problem or to make a reply to the complaint. (2)] Investigations. (1) Upon the receipt of a complaint and following the expiration of the twenty (20) days provided for in

Section 3(2) of this administrative regulation[subsection (1) of this section], the board or its appointed committee may cause an investigation to be made by an individual board member, by any investigation committee, or by any agent or representative appointed by the board. The board may also cause an investigation to be made on its own initiative at any time without a complaint.

(2) If a complaint involves the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

(a) Inform the Department of Kentucky State Police, the Office of the Attorney General, and the Cabinet of Health and Family services with three (3) days of the receipt of the complaint;

(b) Commence an investigation within seven (7) days of the filing of the complaint; and

(c) Complete the investigation and determine whether to proceed with adjudicatory proceedings against the respondent within 120 days of receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 5[3]. Commencement of Adjudicatory Proceedings. (1) Upon completion of the investigation referred to in Section 2(2) of this administrative regulation or after the expiration of the twenty (20) day period referred to in Section 2(1) of this administrative regulation where an investigation is not made or whenever the board has completed an investigation made on its own initiative,

the board may begin formal adjudicatory proceedings in accordance with KRS Chapter 13B. [the following procedure:]

(2) [(1) If it is determined that the facts alleged in the complaint or obtained from the investigation constitute grounds for disciplinary action against a licensee, a hearing shall be scheduled before the board on these allegations.] In any case in which the board has denied an application for a license or failed to renew a license, a hearing shall only be scheduled upon receipt by the board of a written request submitted by or on behalf of the person whose application for license was denied or not renewed.

Section 6. Temporary suspension. (1) The board chair or the board as a whole may issue an emergency order for the immediate temporary suspension of a license or certificate against which disciplinary action or an investigation is pending if it determines that there is a substantial likelihood that the licensee's practice constitutes a danger to patients or the public.

(2) The emergency order shall be made in accordance with KRS 13B.125 and shall be based upon a finding by the board that the emergency order is in the public interest and there is substantial evidence of immediate danger to the health, welfare, and safety of any patient or the general public.

(3) A licensee may appeal the emergency order by a written request to the board for an emergency hearing in accordance with KRS 13B.125 within thirty (30) days after receipt of the order.

Section 7. The board shall immediately submit all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services or any successor entity. [(2) Notice. The notice of hearing shall be issued by the chairman of the board and shall state:

- (a) The time, date, and place of the hearing;
- (b) The legal authority under which the hearing is to be held;
- (c) The statutes or administrative regulations involved; and

(d) A short and plain statement of the complaint or charges which are being preferred and the remedy which is being sought. The notice shall be served by certified mail to the last known address of the party or parties not less than twenty (20) days before the date of the hearing.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to appear personally at the hearing, to be represented by counsel, to cross-examine witnesses appearing against them, and to produce witnesses on their own behalf. When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders, or other correspondence shall be served on such attorney; service on the attorney shall be considered as service on the party and the board shall be notified of any change in such attorney by the party.

(4) Hearing tribunal. Any member or members of the board who participated in the investigation of a complaint or charge against a licensee shall not sit on the board for adjudicatory purposes in connection with the same complaint or charge investigated. The chairman of the board or a hearing officer designated by the board shall preside over the hearing proceedings.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. (1) The board may hear testimony of any person who has information to offer bearing on the subject matter of such hearings. The board may ask any witness questions as may be required for a full and true disclosure of the facts.

(2) A hearing in a contested case involving possible disciplinary action against a licensee, shall proceed in the following order unless the board otherwise directs:

(a) The party filing the complaint or preferring the charges or the persons appointed or designated to present the evidence against the license may briefly state the substance of the charges and the evidence by which he expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise preferred may briefly state the substance of his defense and the evidence which he expects to offer in support of it.

(c) The party filing the complaint or otherwise preferring the charges or the person(s) appointed or designated to present the evidence against the licensee shall have the burden of proof by a

preponderance of the evidence and shall produce his evidence first; the party against whom a complaint has been filed or charges preferred may then produce his evidence. The board may alter the order of proof in any proceeding.

(d) The parties shall then be confined to rebuttal evidence, unless the board, in its discretion, permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the board for decision, or present oral arguments on the issues involved. In the arguments, the party filing the complaint or otherwise preferring the charges or the person appointed or designated to present the evidence against the licensee shall have the conclusion and the party against whom the complaint was filed or charges otherwise preferred shall have the opening.

(3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in subsection (2) of this section shall be reversed.

(4) In any contested case, the board shall as far as practical adhere to the following rules of evidence:

(a) Any evidence which would be admissible by circuit courts of the Commonwealth of Kentucky, shall be admitted in hearings before the board; evidence which would not be admissible by circuit courts of the Commonwealth of Kentucky may be admitted if the board deems it necessary for a full and true disclosure of the facts and the evidence would be of assistance to the board in determining the rights of the parties.

(b) Every party shall have the right to present oral testimony, documentary evidence, exhibits, and rebuttal evidence and conduct cross-examination as may be required for a full and true disclosure of the facts.

(c) Irrelevant, immaterial, or unduly repetitious evidence may be excluded and the board shall give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.

(d) The board may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the board's specialized knowledge; provided, however, the parties shall be afforded an opportunity to contest any facts noticed.

(e) Objections to evidentiary offers may be made and shall be noted in the record.

(f) When necessary to ascertain facts which cannot otherwise be proved, evidence not admissible under these administrative regulations may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(5) The parties to any hearing may agree to waive any of the procedural steps which would otherwise precede the reaching of a final decision by the board, but such waiver shall not be binding on the board.

Section 5. Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the board for final decision, the deliberations of the board shall be governed by the following principles:

(a) Ex parte investigations. Members of the board shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any board member may consult with other members of the board, and may have the aid and advice of one (1) or more personal assistants, including the assistance of counsel.

(b) Separation of functions. No member, officer, or employee of the board who is engaged in the performance of investigative or prosecuting functions for the board in a contested area shall, in that or a factually related case, participate or advise in the decision, except as a witness or counsel in the public hearing.

(c) Examination of evidence. The board shall personally consider the whole record or such portions of the record as may be cited by the parties, and the board's technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(d) The board may recess a hearing for the taking of additional discovery and evidence as required.

(2) Record. The record shall include all pleadings, motions,

exhibits, documentary, and testimonial evidence received or considered, a statement of matters officially noticed, and questions and offers of proof and rulings by the board. A recording of the oral proceedings shall be made by the board, but a written transcript shall not be required. Any party requesting a written transcript of the oral proceedings shall pay for the transcription and the copy.

(3) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the record. The final decision shall include findings of facts and conclusions of law and shall be signed by the president of the board.]

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at noon

CONTACT PERSON: Beverley White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for processing complaints and disciplinary actions by the board.

(b) The necessity of this administrative regulation: KRS 311.410 authorizes the board to promulgate regulations to implement the provisions of KRS Chapter 311.390 to 510. KRS 218A.205 requires the board to establish a procedure for temporary suspension of a license. This administrative regulation establishes the procedures for complaints and temporary suspensions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.490 authorizes the board to take disciplinary action against a licensee after a hearing. KRS 218A.205, as enacted by General Assembly in 2012 (1st Extra. Sess.) Ky. Acts ch. 1, requires the board to temporarily suspend a licensee when the health or welfare of the public is endangered. This administrative regulation sets for the procedures for the complaint and temporary suspension processes.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for disciplinary action and temporary suspension by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the requirement processing complaints against licensees.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for disciplinary actions and temporary suspensions.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the disciplinary and suspension processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license 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: Licensees will follow the procedures in the administrative regulation when a complaint is received.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): There are no costs for following the requirements of

this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The health and welfare of the public will be protected from improper prescribing and dispensing of controlled substances.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons who have a complaint with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.205; 311.410; 311.490.

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

201 KAR 25:090E Statement of Emergency

This emergency administrative regulation establishes the standards for prescribing or dispensing controlled substances by licensed as a podiatrist in the Commonwealth. This emergency administrative regulation must be placed into effect immediately to meet the mandate of 2012 (1st Extra. Sess.) Ky. Acts ch. 1 and to protect the public health and safety from the impacts of improperly prescribed controlled substances. To that end, the standards for prescribing and dispensing of controlled substances are set forth by this emergency administrative regulation. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on July 20, 2012. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT LEVINE, DPM, President

**GENERAL GOVERNMENT CABINET
Kentucky Board of Podiatry
(New Emergency Administrative Regulation)**

201 KAR 25:090E. Prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.205, 218A.172

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 311.410(4)

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS

218A.205(3)(a) requires the board to establish standard for prescribing controlled substances. KRS 218A.172 requires the board to promulgate administrative regulations governing the prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone. This administrative regulation establishes the standards for prescribing or dispensing controlled substances.

Section 1. Prescribing or dispensing a controlled substance.

(1) This administrative regulation governs the prescribing and dispensing of controlled substances listed in Schedule II through V as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130.

(2) When initially prescribing or dispensing a controlled substance, a licensee shall:

(a) Obtain a complete medical history and conduct a physical examination of the patient;

(b) Complete a written treatment plan which states the objectives of the treatment underlying the prescription of the controlled substance and which includes an outline of any further diagnostic examinations that may be required;

(c) Discuss the risks and benefits of the use of controlled substances with the patient or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(d) Verify that the patient is the person that he or she has identified himself or herself as being by requiring the person to produce proper government issued identification;

(e) Query the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) for all information available on the patient when prescribing controlled substances that are included in:

1. Schedule II;
2. Schedule III; and
3. The following from Schedule IV:
 - a. Ambien;
 - b. Anorexics;
 - c. Ativan;
 - d. Klonopin;
 - e. Librium;
 - f. Nubain;
 - g. Oxazepam;
 - h. Phentermine;
 - i. Soma;
 - j. Stadol;
 - k. Stadol NS;
 - l. Tramadol;
 - m. Valium;
 - n. Versed; and
 - o. Xanax;
- (f) Obtain consent for the treatment from the patient in writing;

and

(g) Document the patient's file as required by Section 2 of this administrative regulation.

(3) When it is necessary to continue the prescription or dispensation of a controlled substance after the initial supply is completed, a licensee shall:

(a) Conduct, at reasonable intervals under the circumstances presented, all clinically indicated steps;

(b) Review the course of treatment that he initially prepared to determine if any changes are required;

(c) Provide any new information about the course of treatment or any changes made to the patient;

(d) Query KASPER for all information available on the patient no less than once every three months for all available data on the patient to review that data before issuing any new prescription or refill for the patient for controlled substance specified in subsection (2)(e) of this section; and

(e) Document the patient's file as required by Section 2 of this administrative regulation.

Section 2. Podiatric medical records for patients being prescribed controlled substance shall include at a minimum:

- (1) The patient's name;
- (2) The patient's date of birth;
- (3) The information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;
- (4) The podiatrist's diagnosis of the patient's condition;
- (5) The procedures and treatments to be undertaken and their objectives;
- (6) The date of the procedures or treatments;
- (7) (Whether local or general anesthetics were used, including the type and the amount administered;
- (8) Diagnostic, therapeutic, and laboratory results;
- (9) The findings and recommendations of any other evaluations or consultations;
- (10) All medications administered or prescribed by the podiatrist, including the date, type, dosage, and quantity administered or prescribed;
- (11) Any post-treatment instructions from the podiatrist; and
- (12) Documentation that the KASPER query required by Section 3 of this administrative regulation was completed.

Section 3. When a prescription for a controlled substance is written, a podiatrist shall:

(1) Obtain and document in the patient's podiatric medical record the information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;

(2) Query the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) for all available data on the patient if the controlled substance is one specified in Section 1(2)(e) of this administrative regulation and record the results of the query in the patient's record;

(3) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(4) Obtain consent for the treatment from the patient in writing.

Section 4. Dispensing Schedule II or Schedule III controlled substances containing hydrocodone. (1) A licensee shall not dispense more than a forty-eight (48) hour supply of Schedule II or Schedule III controlled substances containing hydrocodone.

(2) If a patient continues to present with pain after the initial supply has been completed and the podiatrist believes that an additional prescription for a controlled substance is medically appropriate, the podiatrist shall at a minimum:

(a) Follow the requirements of Section 1 of this administrative regulation; and

(b) Prescribe only that amount of the controlled substance that is appropriate under accepted and prevailing practice standards.

Section 5. Authority to prescribe controlled substances. (1) A podiatrist licensed by the board may prescribe any medicine necessary for the treatment of a patient that comes within the practice of podiatry as defined by KRS 311.380(2), including Schedule II and Schedule III controlled substances containing hydrocodone, if the licensee:

(a) Has obtained a license number from the Drug Enforcement Administration;

(b) Registers with and utilizes the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) as required by KRS 218A.202;

(c) Follows the requirements of this administrative regulation;

and

(d) Meets all the requirements for utilizing KASPER promulgated by the Cabinet as well as the requirements set forth in KRS 218A.202.

(2) A licensed podiatrist shall not prescribe or dispense:

(a) With the intent or knowledge that a medication will be used or is likely to be used for any purpose other than one that is necessary for medical treatment or therapeutic use;

(b) With the intent to evade any law governing the sale, use, or disposition of the medication;

(c) When the licensee knows or has reason to know that the abuse of the controlled substance is occurring or may result therefrom; and

(d) In such amounts that the licensee knows or has reason to know, under the circumstance, that the amount prescribed is excessive under accepted and prevailing practice standards.

(3) After a hearing conducted under KRS Chapter 13B and 201 KAR 25:051, the board shall fine a licensee who otherwise has the authority to prescribe controlled substances, but who has failed to register for an account with KASPER, an amount not less than \$250 per prescription for each such prescription that individual has written while not properly registered.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 20, 2012 at noon

CONTACT PERSON: Beverly White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for prescribing or dispensing controlled substances.

(b) The necessity of this administrative regulation: KRS 218A.205 mandates that the board to promulgate regulations for prescribing and dispensing controlled substances. KRS 218A.172 requires certain actions by licensees when prescribing or dispensing Schedule II controlled substances or Schedule III controlled substances containing hydrocodone. This administrative regulation establishes the standards for prescribing and dispensing controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218A.205 mandates that the board to promulgate regulations for prescribing and dispensing controlled substances. KRS 218A.172 requires certain actions by licensees when prescribing or dispensing Schedule II controlled substances or Schedule III controlled substances containing hydrocodone. This administrative regulation establishes the standards for prescribing and dispensing controlled substances.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation establishes the standards for prescribing and dispensing controlled substances.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons are licensed to practice podiatry 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: Licensees will follow the procedures in the administrative regulation when prescribing controlled substances.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for following the requirements of this administrative regulation are not known by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The health and welfare of the public will be protected from improper prescribing and dispensing of controlled substances.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons who have a license with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.205; 218A.172; 311.410.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

STATEMENT OF EMERGENCY

902 KAR 20:420E

This emergency administrative regulation is being promulgated to establish licensure requirements for the operation of pain management facilities. Pursuant to 2012 (Extra. Sess.) Ky. Acts ch. 1 (SS HB 1), the Cabinet for Health and Family Services is charged with responsibility for enforcing licensure standards for existing pain management facilities allowed to continue operating without being owned by a licensed physician. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to

meet a deadline for the promulgation of an administrative regulation that is established by state law, and address the issue of prescription drug abuse, thereby meeting an imminent threat to public health, safety, or welfare. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) will compromise the state's ability to act quickly in its efforts to address the prescription drug epidemic via regulation of pain management facilities exempt from the physician-ownership/investment requirements of KRS 218A.175. 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.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

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

902 KAR 20:420E. Pain Management Facilities.

RELATES TO: KRS 216B.010-216B.131, 216B.990, 218A.175
STATUTORY AUTHORITY: Ky. Acts ch. 1 (SS HB 1), KRS 216B.042, 216B.105, 218A.175

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. KRS 218A.175 imposes a physician-ownership or investment requirement on all pain management facilities except for those health facilities operating as a pain management facility on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment. This administrative regulation establishes the minimum licensure requirements for the operation of a pain management facility that is exempt from the physician-ownership requirement of KRS 218A.175. Facilities that meet the statutory definition of pain management facility and which are exempt from the physician-ownership requirement of KRS 218A.175 shall comply with the requirements of this emergency administrative regulation by July 20, 2012.

Section 1. Definitions. (1) "Adverse action" shall mean action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a pain management facility's license to operate.

(2) "License" means an authorization issued by the cabinet for the purpose of operating a pain management facility.

(3) "Licensee" means the owner, individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the pain management facility is vested.

(4) "National and State Background Check Program" means an initiative implemented by the cabinet, with available appropriations and funding, for the performance of:

(a) Registry checks; and

(b) Fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(5) "Pain management facility" or "facility" is defined by KRS 218A.175 to mean a facility where the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances and:

(a) The facility's primary practice component is the treatment of

pain; or

(b) The facility advertises in any medium for any type of pain management services.

(6) "Unencumbered license" shall mean a license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to controlled substances.

Section 2. Exemption from Licensure. A pain management facility shall not include the following:

(1) A hospital, including a critical access hospital, as defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;

(2) A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;

(3) A hospice program or residential hospice facility licensed under KRS Chapter 216B;

(4) An ambulatory surgical center licensed under KRS Chapter 216B; or

(5) A long-term-care facility as defined in KRS 216.510.

Section 3. Ownership. (1) KRS 218A.175 provides that the physician ownership or investment requirement shall not be enforced against any pain management facility existing and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment.

(2) A facility licensed pursuant to this administrative regulation shall be immediately disqualified from the physician-ownership exemption of KRS 218A.175, and the cabinet shall revoke the facility's license pursuant to Section 11(3) of this administrative regulation if:

(a) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person contracted or employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment; or

(b) A change of ownership occurs.

(3)(a) A change of ownership shall be deemed to occur if any ownership interest, or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another for an existing facility licensed pursuant to this administrative regulation.

(b) The pain management facility's license shall not be transferred to a new owner.

Section 4. Background Checks and Prohibition Against Employment. (1) All owners, operators, and employees, including contract employees of a pain management facility, shall submit to an in-state criminal background check from the Justice and Public Safety Cabinet or Administrative Office of the Courts until such individuals are phased into the cabinet's National and State Background Check Program.

(2) A facility shall not be licensed if owned in part by, contracts with, or employs a physician or prescribing practitioner:

(a) Whose Drug Enforcement Administration number has ever been revoked;

(b) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c) Who has had any disciplinary limitation placed on his or her license by:

1. The Kentucky Board of Medical Licensure;

2. The Kentucky Board of Nursing;

3. The Kentucky Board of Dentistry;

4. The Kentucky Board of Optometric Examiners;

5. The State Board of Podiatry;

6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d) Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

Section 5. Licensure Application, Fee, and Renewal. (1) An applicant for an initial license as a pain management facility shall, as a condition precedent to licensure, be in compliance with this administrative regulation and KRS 218A.175, which may be determined through an on-site inspection of the facility.

(2) To qualify for licensure under this administrative regulation, a completed "Application for License to Operate a Pain Management Facility", incorporated by reference in Section 12(1)(a) of this administrative regulation, shall be:

(a) Submitted to and received by the cabinet no later than close of business, July 20, 2012; and

(b) Submitted to the cabinet annually thereafter.

(3) The initial fee for licensure and annual fee for re-licensure as a pain management facility shall be \$2,000, an amount determined to be sufficient to offset the cost of regulating pain management facilities.

(4) A license shall:

(a) Expire one (1) year from the date of issuance; and

(b) Be renewed if the licensee:

1. Submits a completed "Application for License to Operate a Pain Management Facility" accompanied by the \$2,000 annual re-licensure fee; and

2. Has no pending adverse action.

(5) A pain management facility that does not have a pending adverse action but has failed to renew its license on or before the expiration date shall cease operating the facility unless:

(a) The items required under subsection (4)(b) of this section have been submitted; and

(b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.

Section 6. Facility Patients. To determine if the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, the Office of Inspector General:

(1) Shall have access to the facility pursuant to KRS 216B.042, including the facility's patient records;

(2) Shall calculate the majority of patients based upon the number of unduplicated patients treated in a one (1) month time period; and

(3) May use data from the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program to determine if the majority of the patients of the facility's practitioners are prescribed controlled substances.

Section 7. Administration. (1) A pain management facility shall be located in a fixed site.

(2) Each pain management facility shall:

(a) Be licensed separately regardless of whether the facility is operated under the same business name or management as another facility; and

(b) Post the license conspicuously in a public area of the facility.

(3) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities within the pain management facility, including the actions of the physicians and prescribing practitioners; and

2. Compliance with federal, state and local laws and regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 et. seq.) and KRS Chapter 218A.

(b) The licensee shall establish lines of authority and designate an administrator who:

1. May serve in a dual role as the facility's medical director;

and

2. Shall be principally responsible for the daily operation of the facility.

(4) Policies. The facility shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if the facility performs any functions related to the storage, handling and administration of drugs and biological; and

(g) Procedures for compliance with KRS 218A.175, which requires a pain management facility to:

1. Accept private health insurance, from an entity registered pursuant to KRS Chapter 304.17A with the Kentucky Department of Insurance, as one (1) of the facility's allowable forms of payment for goods or services provided; and

2. Accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

(5) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of services offered by the pain management facility, the facility:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(6) Personnel.

(a) Prescribers. All prescribers employed or contracted by a pain management facility shall be board certified and have a full, active, and unencumbered license to practice in the Commonwealth issued under KRS Chapter 311 or KRS Chapter 314.

(b) Medical director.

1. The facility's medical director shall:

a. Be responsible for complying with all requirements related to the licensure and operation of the facility;

b. Be physically present practicing medicine in the facility for at least fifty percent (50%) of the time that patients are present in the facility; and

c. Be board certified and have a full, active, and unencumbered license to practice medicine in the Commonwealth issued under KRS Chapter 311.

(c) Medical director's qualifications. The facility's medical director shall:

1. Hold a current subspecialty certification in pain management by a member of the American Board of Medical Specialties;

2. Hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

3. Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties;

4. Hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

5. Hold a current board certification by the American Board of Pain Medicine;

6. Hold a current board certification by the American Board of Interventional Pain Physicians;

7. Have completed an accredited fellowship in pain management; or

8. Is an owner of or practices in the specific facility applying for licensure as a pain management facility and meet the following qualifications:

a. Completed an accredited residency which included a component in the practice of pain management;

b. Practiced in the specialty of pain management during the five (5) year period preceding July 20, 2012;

c. Is eligible for and has provided the Kentucky Board of Medical Licensure and the Office of Inspector General with written verification that the facility's medical director has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

d. Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements of subparagraphs 1. through 7. of this paragraph to continue to be qualified as the facility's medical director.

(d) Within ten calendar (10) days after termination of the medical director, the facility shall notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the facility.

(e) The facility's medical director shall sign and submit the "Pain Management Facility Data Reporting Form", incorporated by reference in Section 12(1)(b) of this administrative regulation, to the cabinet within thirty (30) calendar days of the quarter ending March 31, June 30, September 30, and December 31 of each year. The medical director shall document the following on the Pain Management Facility Data Reporting Form:

1. The number of new and repeat patients seen and treated at the facility who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain;

2. The number of patients discharged due to drug abuse;

3. The number of patients discharged due to drug diversion; and

4. The number of patients treated at the facility whose domicile is located somewhere other than in Kentucky. A patient's domicile shall be the patient's fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

(f) The medical director shall, within ten (10) days after the facility hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber.

(7) Staffing. At least one (1) physician and one (1) registered nurse shall be on duty in the facility during all hours the facility is operational.

(8) Job descriptions. There shall be a written job description for each position which shall be reviewed and revised as necessary.

(9) Personnel records. Current personnel records shall be maintained for each employee and include the following:

1. Name, address and social security number;

2. Evidence of current certification or licensure of personnel;

3. Records of training and experience;

4. Records of performance evaluation; and

5. Annual verification of certification or licensure.

(10) In-service training.

(a) All personnel shall participate in orientation and annual in-service training programs relating to their respective job activities.

(b) All licensed prescribers in a pain management facility shall comply with the professional standards established by their respective licensing boards for the completion of continuing professional education.

(11) Quality assurance program.

(a) Each pain-management facility shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;

2. Evaluates methods to improve patient care;

3. Identifies and corrects deficiencies within the facility;

4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and

5. Provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public.

(b) The medical director shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;

2. The identification of trends or patterns of incidents;

3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and

4. The documentation of these functions and periodic review no less than quarterly of such information by the designated physician or prescribing practitioner.

(12) Medical records. Each pain management facility shall maintain accurate, readily accessible, and complete medical records that conform to the professional standards established by the respective licensing board for prescribers of controlled substances in the facility.

(13) Professional standards for prescribing and dispensing controlled substances.

(a) All licensed prescribers in a pain management facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by their professional licensing boards.

(b) A representative from the Office of Inspector General shall review facility records, including the facility's patient records, to verify facility compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 which establish standards for licensees authorized to prescribe or dispense controlled substances.

Section 8. Equipment. Equipment used for direct patient care by a pain management facility shall comply with the following:

(1) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(2) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and administrative regulations; and

(3) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 9. Physical environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. An initial license to operate a pain management facility or a new license to operate a facility upon approval of a change of location shall not be issued before the facility obtains approval from the State Fire Marshal's office.

(3) Physical location and overall environment.

(a) The facility shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom;

6. Have an administrative area, including room for storage of medical records, supplies, and equipment;

7. Have private patient examination rooms;

8. Have treatment rooms, if treatment is being provided to the patients; and

9. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the facility's medical director and the names of all physicians and prescribers practicing in the facility.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(4) Housekeeping and maintenance services.

(a) The facility shall maintain a clean and safe facility free of unpleasant odors.

(b) Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(c)1. The facility shall provide a hand washing facility in each exam room with:

- a. Hot and cold water and blade type operating handles;
- b. Knee or foot controls; or
- c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(d) The premises shall be well kept and in good repair. Requirements shall include:

1. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(5) The facility shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

- 1. Universal blood and body fluid precautions;
- 2. Precautions against airborne transmittal of infections;
- 3. Work restrictions for employees with infectious diseases; and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(6) Hazardous cleaning solutions, compounds, and substances shall be:

- (a) Labeled;
- (b) Stored in closed metal containers;
- (c) Kept separate from other cleaning materials; and
- (d) Kept in a locked storage area apart from the exam room.

(7) The facility shall be kept free from insects and rodents, and their nesting places.

(8) Garbage and trash:

- (a) Shall be removed from the premises regularly; and
- (b) Containers shall be cleaned daily.

(9) A facility shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

(a) Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(10)(a) Disposable waste shall be:

- 1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and
- 2. Handled, stored, and disposed of in such a way as to minimize

direct exposure of personnel or patients to waste materials.

(b) The facility shall establish specific written policies regarding handling and disposal of waste material.

Section 10. Inspections. (1) The cabinet shall conduct unannounced inspections of the pain management facility no less than annually, including a review of the patient records, to ensure that the facility complies with the provisions of this administrative regulation and KRS 218A.175.

(2) A representative from the Office of Inspector General shall have access to the facility and the facility's records pursuant to KRS 216B.042.

(3) Violations.

(a) The Office of Inspector General shall notify the pain management facility in writing of a regulatory violation identified during an inspection.

(b) The facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or the medical director and shall specify:

- a. The date by which the violation shall be corrected;
- b. The specific measures utilized to correct the violation; and
- c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the facility of the decision to:

- a. Accept the plan;
- b. Not accept the plan; or
- c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2b of this paragraph shall:

- a. State the specific reasons the plan is unacceptable; and
- b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:

- a. Accept the plan;
- b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
- c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction shall be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(4) Complaints. An unannounced inspection shall be conducted:

- (a) In response to a credible, relevant complaint or allegation; and
- (b) According to procedures established in this section.

Section 11. Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management Facility received if:

(a) The application is received by the cabinet after close of business on July 20, 2012;

(b) The facility fails to comply with Section 4(2) of this administrative regulation;

(c) Any person with ownership interest in the facility has had previous ownership interest in a health care facility which had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(d) An administrative sanction or criminal conviction relating to controlled substances has been imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment; or

(e) The facility fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation.

(2) If during the initial inspection of the pain management facility the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the

improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Withhold issuing a license to the facility pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process if applicable.

(3) The cabinet shall revoke a license if it finds that:

(a) There has been a substantial failure by the facility to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment;

(c) A change of ownership has occurred;

(d) The facility fails to accept private health insurance as one (1) of the facility's allowable forms of payment for goods or services provided, or the facility fails to accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian;

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation; or

(f) The facility fails to comply with Section 4(2), Section 7(6)(a),(b), or (c), or Section 7(7) of this administrative regulation.

(4) The denial or revocation of a facility's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a pain management facility's license if the cabinet has probable cause to believe that:

1. The continued operation of the facility would constitute a danger to the health, welfare, or safety of the facility's patients or of the general public; or

2. A physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(b)1. The pain management facility shall cease operating immediately on the date the facility is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the facility's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of an emergency suspension shall be served on the facility by certified mail, return receipt requested, or by personal service.

(8)(a) Any facility required to comply with an emergency suspension issued under subsection (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party

aggrieved by the decision may appeal to Circuit Court.

(10) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the facility's license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with the facility.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG 20:240, Application for License to Operate a Pain Management Facility", June 2012 edition; and

(b) "OIG 20:240-1, Pain Management Facility Data Reporting Form", June 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 19, 2012

FILED WITH LRC: July 20, 2012 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure by the Cabinet for Health and Family Services of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the operation of existing pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation also conforms to KRS 218A.175, which provides for an exemption from the physician ownership or investment requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the cabinet's licensure requirements for pain management facilities.

(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, organi-

zations, or state and local governments affected by this administrative regulation: The administrative regulation will affect those pain management facilities that meet the requirements for exemption from the physician ownership/investment requirements of KRS 218A.175.

(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: Pain management facilities exempt from the physician-ownership/investment requirements of KRS 218A.175 will be required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a pain management facility will be \$2000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity exempt from the physician-ownership requirement of HB 1 and which demonstrates compliance with this administrative regulation will be approved for licensure as a pain management facility and allowed to continue operating.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating pain management facilities, which will include initial and annual surveys conducted by at least one (1) nurse consultant inspector and one (1) pharmacist consultant, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating pain management facilities on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from cabinet-licensed pain management facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a pain management facility will be \$2000.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a pain management facility. Both the initial and annual licensure fee will be \$2000.

(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. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the licensure of pain management facilities by the Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and KRS 218A.175

3. 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 cabinet will collect an initial fee of \$2000 from each applicant for licensure as a pain management facility that is exempt from the physician-ownership/investment requirements of KRS 218A.175.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will collect an annual licensure fee of \$2000 from each licensed pain management facility that is exempt from the physician-ownership requirement of HB 1 from the 2012 Special Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

902 KAR 55:110E

This emergency administrative regulation is being promulgated to comply with 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1). Effective July 20, 2012, KRS 218A.202(18) requires that the Cabinet establish by administrative regulation an error resolution process allowing a patient to whom a report has been disclosed under KRS 218A.202(8) to request the correction of inaccurate information contained in the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) system relating to that patient. Additionally, KRS 218A.202(15) permits the Cabinet to limit by administrative regulation the length of time that data remain in KASPER. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the state's ability to comply with the provisions of 2012 (Extra. Sess.) Ky. Acts ch. 1 on the date that the Act becomes effective as law. 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.

STEVEN L. BESHEAR, Governor

AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(Emergency Amendment)

902 KAR 55:110E. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(9), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 218A.250

EFFECTIVE: July 20, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS

218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to establish criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a) Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy which has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(5) "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(6) "KASPER Reporting Form" means a form that:

(a) Is in the format of the "KASPER Reporting Form" incorporated by reference in Section 7 of this administrative regulation; and

(b) Contains the information specified by Section 2(2) of this administrative regulation.

(7) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

Section 2. Data Reporting. (1) A dispenser or a facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2) Reports pursuant to subsection (1) of this section shall not be required for:

(a) A long-term care facility as defined by KRS 216.510(1);

(b) An ambulance provider; or

(c) A jail, correctional or detention facility, or a juvenile detention facility.

(3) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of drug dispensed;

(d) Date of dispensing;

(e) Estimated day's supply dispensed;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) Serial number assigned by the dispenser; and

(h) The Drug Enforcement Administration registration number of the dispenser.

(4)(a) Prior to July 1, 2013, [(3)] the data identified in subsection (3)[(2)] of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension.

(b) Effective July 1, 2013, the data identified in subsection (3) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension.

(5)[(4)](a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or

2. The dispenser cannot meet the deadline established by subsection (4)[(3)] of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(6)[(5)] An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(7)[(6)] Except as provided in subsection (9) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Double-sided, high-density micro-floppy disk;

(c) One-half (1/2)-inch nine (9) track 1600 or 6250 BPI magnetic tape;

(d) Secure File Transfer Protocol;

(e) https protocol; or

(f) CD/DVD; or

(g) Secure Virtual Private Network connection.

(8)[(7)] The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Substances", developed by the American Society for Automation in Pharmacy, Version 4.1[May 1995], or a comparable format approved by the branch.

(9)[(8)] A dispenser who does not have an automated record-keeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances", shall report the data identified in subsection (3) of this section using an Internet accessible web portal designated by the cabinet. [be granted a waiver from the electronic reporting requirement if the dispenser:

(a) Makes a written request to the branch within twenty-four (24) hours of discovery and of the circumstances necessitating the request, or on the next date that state offices are open for business following the discovery; and

(b) Agrees in writing to immediately begin reporting the data by submitting a completed "KASPER Reporting Form" or comparable document approved in writing by the branch.]

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at www.chfs.ky.gov/KASPER [<http://chfs.ky.gov/oig/kasper>].

(3) A request for a KASPER provider report from a peace officer authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the "Request for KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may request a KASPER report on the decedent, [one (1) of the following forms:

(a) For law enforcement, on the "Request for Law Enforcement KASPER Report", Form DCB-15L;

(b) For judiciary, on the "Request for KASPER Report (Court)", Form DCB-15J; or

(c) For pharmacy, on the "Request for KASPER Report", Form DCB-15P.]

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number

for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the Social Security number, driver's license number, or the number "000-00-0000", as applicable, of the parent or guardian shall be used.

(5) If a patient is an animal, ~~the owner's Social Security number, driver's license number, or~~ the number "000-00-0000" ~~[, as applicable,]~~ shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER for a period of two (2) years plus the current year prior to its transfer to the State Archives Center.

Section 8. Error Resolution. (1) A patient to whom a report has been disclosed under KRS 218A.202(8) may request that information contained in KASPER be corrected if the patient believes that any information related to himself or herself is inaccurate. The patient or patient's representative shall:

(a) Contact the dispenser who reported the information required by Section 2(3) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient or patient's representative pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database; and

(b) Notify the patient or patient's representative that the corrected information has been transmitted.

(3) If a dispenser maintains that information regarding the dispensing of a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the Drug Enforcement and Professional Practices Branch (DEPPB) to identify the source of an error in the KASPER report, and the cabinet shall correct the information in the KASPER database.

(4) Upon correction of information in the KASPER database pursuant to subsection (3) of this section, cabinet staff shall notify the patient or patient's representative within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

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

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, Version 4.1; and [May, 1995;]

(b) ["KASPER Reporting Form", July 2008;

(c) "Request for [Law Enforcement] KASPER Report [Law Enforcement and Licensure Boards]", Form DCB-15L, 12/10; 5/06;

(d) "Request for KASPER Report (Court)", Form DCB-15J, 5/06; and

(e) "Request for KASPER Report", Form DCB-15P, 5/06.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [This

material is also available online at <http://chfs.ky.gov/oig/KASPER.htm>.]

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 20, 2012 at 10 a.m.

CONTACT PERSON: Mary Reinle Begley, Inspector General
Stephanie Brammer-Barnes, Internal Policy Analyst, Office of Inspector General, (502) 564-2888.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) system, which requires all dispensers of controlled substances to report to the Cabinet each medication dispensed, including the date, time, and person to whom a medication was dispensed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to the KASPER system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.202 by establishing the KASPER system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed in the Commonwealth. This administrative regulation is consistent with the policy mandate of KRS 218A.202 and assists in the identification of unauthorized use and dispensation of controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the KASPER system and sets forth the mandatory reporting requirements for dispensers of controlled substances.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that the following practitioners and facilities are not required to report dispensing data to KASPER: (1) individuals licensed to practice veterinarian medicine under KRS Chapter 321; (2) long-term care facilities; (3) ambulance providers; and (4) correctional facilities. Pursuant to 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1), this amendment establishes a one day reporting requirement which shall be effective July 1, 2013, establishes a data retention requirement, and provides for an error resolution process. This amendment further clarifies that a medical examiner engaged in a death investigation pursuant to KRS 72.026 may request a KASPER report on the decedent.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing KASPER system requirements for monitoring Schedules II, III, IV, and V controlled substances that are dispensed in the Commonwealth.

(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 demonstrating compliance with 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every practitioner and pharmacist in the Commonwealth required by state law to use the KASPER system.

(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: Pursuant to KRS 218A.202(3), dispensers will be required to report data to KASPER within one (1) day of the dispensing. This requirement will be effective on July 1, 2013.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners or pharmacies in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the effectiveness of the KASPER system, and includes an error resolution process by which a patient may request that information contained in KASPER be corrected if the patient believes that such data is inaccurate.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under the Hal Rodgers Prescription Drug Monitoring Program and proceeds from the National Mortgage Settlement.

(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 amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 every practitioner and pharmacist in the Commonwealth who dispenses controlled substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202, 218A.240, 218A.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, August 14, 2012)

16 KAR 2:120. Emergency certification and out-of-field teaching.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030, 161.100, 161.1211, 161.1221, 334A.030, 334A.033, 334A.035, 334A.050, 334A.060

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board on Form TC-4F:

(a) Qualified teachers have not applied for the vacant position and qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means;

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions;

(d) The position shall be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession; and

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers.

1. The term of validity of an emergency certificate may be limited to a period less than the full school year.

2. The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board.

3. In accordance with the licensure requirements of KRS 334A.030, 334A.033, 334A.035, 334A.050, and 334A.060, the Education Professional Standards Board shall not issue an emergency certificate for teaching exceptional children with communication disorders.

~~(b) [Until June 30, 2011, the issuance of an emergency certificate for a full-time assignment for each subsequent year shall require completion of six (6) hours of credit from the preparation program leading to the required certification for the position.]~~

~~(c) Beginning July 1, 2011,]~~ An emergency certificate shall

not be issued to the same person in any subsequent year unless the original emergency certificate was issued under the following conditions:

1. The emergency certificate was issued after February 15 of a school year; or

2. The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.

~~(c) [(d)]~~ If an emergency certificate is issued to a person pursuant to paragraph (c) of this subsection, there shall be no more than one (1) subsequent issuance of an emergency certificate to the same person.

(3)(a) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, including IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

1. The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education;

2.a. The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; or

b. If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training offered through one (1) of the state's eleven (11) special education cooperatives. The training shall be similar to the topics covered at the conferences; and

3. The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.

(b) The Kentucky Department of Education shall report to the Education Professional Standards Board those emergency certified teachers of exceptional children who have not completed the training requirements established in this subsection by June 30 of each year for the preceding school year.

~~(4) [(a)]~~ The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers. ~~[Emergency certificates for substitute teaching may then be issued by the local school district subject to the priority schedule for the employment of substitute teachers as established by 16 KAR 2:030. (b) Each local school district shall report by June 30 of each year the number of days of substitute teaching performed by each emergency teacher.]~~

(5) The Education Professional Standards Board shall periodically review the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(6)(a) 1. An emergency certificate for full-time or part-time employment shall be issued only to individuals who:

a. Have completed a minimum of a bachelor's degree from a regionally accredited college; and

b.(i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(ii) Have a minimum 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.

2. An emergency certificate for full-time or part-time employ-

ment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010.

(b)[4-] An emergency certificate for substitute teaching shall be issued to individuals who:

1. [a-] Have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution; and

2.a.[b.(i)] Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

b. [(ii)] Have a minimum 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.[2- An emergency certificate for substitute teaching issued for the 1992-93 school year may be re-issued for 1993-94 and for succeeding consecutive years.]

(c) An emergency certificate for substitute teaching in any career and technical education or occupation-based position may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.

(7)(a) A Form TC-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

(b) A TC-4Ve signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

(c) A local school district shall review the qualifications and transcripts for each applicant for an emergency certificate for all applicants for [issue] [emergency certificates] for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and administrative regulations regarding school personnel.

1. a. A local school district shall initiate the online application process for[require] candidates for an emergency certificate for substitute teaching using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.]; and [to complete a Form TC-4.]

b. A candidate for an emergency certificate for substitute teaching shall complete the Form TC-4 by[application process] using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.

2. A local school district shall require candidates for an emergency certificate for substitute teaching for career and technical education or occupation-based emergency positions to complete a Form TC-4VE.

3. A local school district shall submit any[TC-4 or] TC-4VE application on which the candidate has provided an affirmative answer to any question in the application's Section IV.[f.] Character and Fitness, to the Education Professional Standards Board for approval prior to employing the candidate in a substitute teaching position.

Section 3. Rank and Salary Provisions. (1) The Education Professional Standards Board shall issue the emergency certificate for full-time or part-time employment established in Section 2 of this administrative regulation with a rank designation based upon the criteria established in this subsection.[f:]

(a) A teacher holding a valid Kentucky teaching certificate shall be issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's regular certificate.

(b)1. A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 16 KAR 7:010 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's one (1) year provisional certificate.

2. The teacher shall maintain a half-time enrollment in the internship as defined in 16 KAR 7:010 to remain eligible for the higher rank established in this paragraph.

3. If the teacher terminates or otherwise fails to continue enrollment in the internship prior to its successful completion, the teacher shall be reclassified at Rank IV until the teacher is properly reenrolled in the internship program.

(c) A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher:

1. Is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 16 KAR 7:010; and

2. Possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.

(d) An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

(2) Local school districts issuing the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the rank classifications established in KRS 161.1211.

Section 4. Out-of-field Teaching. (1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;

(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and

(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;

2. The number of teachers who hold an expired certificate;

3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and

4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor, or area of concentration in the subject area they are teaching.

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

(a)[Form TC-4, 10/2009;(b)] "Form TC-4F," revised 10/2009;[and]

(b)[(e)] "Form TC-4VE," 10/2009;[and]

(c) "On-line TC-4 Implementation Guide for Kentucky School Districts," May 2012; and

(d) "Form TC-4," 10/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY GUNN, Chairperson

APPROVED BY AGENCY: May 22, 2012

FILED WITH LRC: June 5, 2012 at noon

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.

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FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Sales and Excise Taxes (As Amended at ARRS, August 14, 2012)

103 KAR 31:170. Disaster Area Relief Sales and Use Tax Refunds.

RELATES TO: KRS 139.519, 139.720, 139.770
STATUTORY AUTHORITY: KRS 131.130(1), 139.519(7)(a),
139.710[, 2012 Ky. Acts ch. 145, sec. 1(7)(a)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS
131.130(1) authorizes the Department of Revenue to promulgate
administrative regulations necessary for the administration and
enforcement of all tax laws in Kentucky. KRS 139.710 authorizes
the department to administer the provisions of KRS Chapter 139,
relating to the assessment, collection, refund, and administration of
sales and use taxes. KRS 139.519(2012 Ky. Acts ch. 145) estab-
lishes the tax refund provisions for sales and use tax paid on build-
ing materials purchased for the purpose of repairing or replacing a
building damaged or destroyed by a disaster within a disaster area.
This administrative regulation establishes the requirements
for disaster area relief sales and use tax refunds.

Section 1. Definitions. (1) "Building materials" is defined in
KRS 139.519(1)(a)[2012 Ky. Acts ch. 145, sec. 1(1)(a)].
(2) "Disaster" is defined in KRS 139.519(1)(b)[2012 Ky. Acts
ch. 145, sec. 1(1)(b)].
(3) "Disaster area" is defined in KRS 139.519(1)(c)[2012 Ky.
Acts ch. 145, sec. 1(1)(c)].
(4) "Qualifying construction" means:
(a) Construction that repairs the portion of a building damaged
by a disaster in a disaster area; or
(b) Construction that replaces a building damaged by a disas-
ter in a disaster area.

Section 2. Refund Application Requirements. (1) A request for
a refund[Requests for refunds] shall be filed with the Department
of Revenue after completion of the ["]qualifying construction["]
and within three (3) years from the date the disaster area is declared.

(2) A refund request[Refund requests] shall be postmarked,
electronically submitted, or if delivered by messenger, hand-
stamped by the department by the date required in subsection (1)
of this section to qualify for consideration and shall include the
following completed information:

- (a) Application for Kentucky Disaster Relief Sales and Use
Tax Refund, Form 51A600;
- (b) Information Sharing and Assignment Agreement for Disas-
ter Relief Refund Claims, Form 51A601;
- (c) Expenditure Report for Building Materials Disaster Relief
Refunds, Form 51A602;
- (d) Copies of contractor invoices to the legal building owner, if
applicable;
- (e) Related sample sales receipts of ["]building materials["]
purchased from each vendor;
- (f) Photographs of disaster damage and related construction;
- (g) Other applicable documents that the applicant believes
will support[supporting] the refund claim; and
- (h) One of the following types of documentation:

1. Confirmation letter that the legal building owner is eligible for
assistance from the Federal Emergency Management Agency
(FEMA), United States Department of Homeland Security because
of property damage from the disaster; or

2. A copy of the insurance claim filed for the building damage
sustained in the disaster.

3. Any request for a refund filed with the Department after the
three (3) year period established[referred to] in subsection (1) of
this section shall be denied.

Section 3. Record Keeping Requirements. The legal owner of
the building and other applicable parties shall keep adequate and
complete records supporting the refund request for a pe-
riod[periods] not less than four (4) years as provided for in KRS
139.720. The department may audit the records of all parties in-

involved as necessary to verify the refund request and to ensure
compliance.

Section 4. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:

- (a) "Application for Kentucky Disaster Relief Sales and Use
Tax Refund", Form 51A600, August[April] 2012;

- (b) "Information Sharing and Assignment Agreement for Disas-
ter Relief Refund Claims", Form 51A601, August[April] 2012; and

- (c) "Expenditure Report for Building Materials Disaster Relief
Refunds", Form 51A602, April 2012.

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Department of Revenue, 501
High Street, Frankfort, Kentucky 40601, Monday through Friday, 8
a.m. until 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: May 11, 2012

FILED WITH LRC: May 11, 2012 at 1 p.m.

CONTACT PERSON: Devon Hankins, Policy Advisor and Leg-
islative Liaison, Office of General Counsel, Office of the Secretary,
Finance and Administration Cabinet, 392 Capitol Annex, Frankfort,
Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (As Amended at ARRS, August 14, 2012)

201 KAR 2:340. Special pharmacy permit for clinical prac- tice.

RELATES TO KRS 315.010(9), 315.020, 315.035,
315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035
authorizes the Board of Pharmacy issue a permit to a pharma-
cy. KRS 315.191(1)(a) authorizes the Board of Pharmacy to prom-
ulgate administrative regulations with minimum requirements for
the permitting of those entities that provide non-dispensing phar-
macy services. This administrative regulation establishes the re-
quirements for the special pharmacy permit for clinical practice.

Section 1. Definition. "Special pharmacy permit for clinical
practice" means a permit issued to a pharmacy that maintains
patient records and other information for the purpose of engaging
in the practice of pharmacy and does not dispense prescription
drug orders.

Section 2. General Requirements. (1) An applicant for a spe-
cial pharmacy permit for clinical practice shall:

- (a) Prepare and adopt a policy and procedure manual that is
updated annually;

- (b) Maintain pharmacy references as outlined in 201 KAR
2:090;

- (c) Maintain a physical pharmacy address;

- (d) Designate a Pharmacist-in-Charge (PIC) without a required
minimum number of hours of physical presence;

- (e) Maintain patient records for five (5) years in a manner that
shall provide adequate safeguard against improper manipulation or
alteration of the records; a computer malfunction or data
processing services' negligence is not a defense against the
charges of improper recordkeeping; and

- (f) Maintain patient records by establishing:

1. A patient record system to be maintained for patients for
whom non-dispensing pharmacy services and functions are being
performed;

2. A procedure for obtaining, recording, and maintaining infor-
mation required for a patient record by a pharmacist, pharmacist
intern, or pharmacy technician; and

3. A procedure for a patient record to be readily retrievable by
manual or electronic means.

(2) An applicant for a special pharmacy permit for clinical prac-
tice shall be exempt from the following:

(a) Prescription equipment requirements of 201 KAR 2:090, Section 2;

(b) Pharmacy sanitation requirements of 201 KAR 2:180; and

(c) Security and control of drugs and prescriptions requirements of 201 KAR 2:100, Sections 1, 2, 3, and 4.

Section 3. Pharmacy Closure. The permit holder shall provide notification to the board thirty (30) days prior to permanent pharmacy closure.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special pharmacy permit for clinical practice on either the Application for Special Pharmacy Permit for Clinical Practice or the Application for Special Pharmacy Permit for Clinical Practice Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(9); or

(b) Renewal application fee established by 201 KAR 2:050, Section 1(10).

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

(a) "Application for Special Pharmacy Permit for Clinical Practice", Form 1, 5/2012; and

(b) "Application for Special Pharmacy Permit for Clinical Practice Renewal", Form 2, 5/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: June 7, 2012

FILED WITH LRC: June 14, 2012 at 9 a.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, August 14, 2012)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on current physical therapy laws and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section; and

3. Hours may be earned from Category 2 as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section; and

3. Hours may be earned from Category 2 as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium;

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion or auditing of an accredited postsecondary educational institution credit course.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of a continued competency~~[continuing education]~~ course, workshop, seminar, or symposium that has been approved by the board or its designee. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(d) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(e) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(g) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(h) Completion of a clinical residency program, or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(i) Engaging in the practice of "physical therapy" as defined by KRS 327.010(2) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(j) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(k) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(l) Election or appointment to a position of the Kentucky Physical Therapy Association, APTA or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(m) Member of a committee or task force for one (1) of the organizations in paragraph (k) or (l) of this subsection. One (1)

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contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board; and

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension~~[of Time]~~ for Completion of Continued~~[Continuing]~~ Competency Form, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension~~[of Time]~~ for Completion of Continued~~[Continuing]~~ Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued~~[continuing]~~ competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued~~[continuing]~~ competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference.

(1) "~~Exemption or Extension~~[Extension of Time and Exemption]" for Completion of Continued Competency Form", June 2012~~[April 2012]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: June 14, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (As Amended at ARRS, August 14, 2012)

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.040(2), 324A.052

STATUTORY AUTHORITY: KRS 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 3351). KRS 324A.035(1) and (3) require the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the: types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

- (1) Certified general real property appraiser;
- (2) Certified residential real property appraiser;
- (3) Licensed real property appraiser; or
- (4) Associate real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property.

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units.

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units with a transaction value less than \$1,000,000; and

(b) Complex, one (1) to (4) residential units with a transaction value less than \$250,000.

(4)(a) Associate. An associate real property appraiser:

1. May perform an appraisal of property that the supervising appraiser of the associate is permitted to appraise; and

2. Shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log shall be maintained for each supervising appraiser.

(c) The associate shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed by the associate;
5. Scope of the review;
6. Scope of the supervision by the supervising appraiser;
7. Number of actual hours worked by the associate on the assignment; and

8. Signature and state certification number of the supervising appraiser.

(d) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:

1. Have been ~~licensed or~~ certified by the board for a period of ~~three (3) years~~ ~~one (1) year~~;

2. Be in good standing with the board;

3. Be responsible for the training and supervision of the associate; ~~and~~

4. ~~Only a Certified Residential Real Property Appraiser or a Certified General Property Appraiser who has been certified by the board for a period of one (1) year is eligible to be a supervising appraiser; and~~

5. Only a Certified General Real Property Appraiser shall provide supervision for a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(f) The supervising appraiser shall:

1. Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;

2. Review reports by the associate;

3. Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to insure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040, for the property type;

4. Allow an associate who has completed the fifty (50) appraisal assignments required by subparagraph 3 of this paragraph to inspect properties located within fifty (50) miles of the supervisor's office without being accompanied by the supervisor, if the supervisor has determined that the associate is competent to perform an appraisal;

5. For the twelve (12) months following the date of issuance of an associate license, accompany the associate and inspect each appraised property and the comparable sales on each appraisal assignment located more than fifty (50) miles from the supervisor's office;

6. Be limited to a maximum of three (3) real property associates at a time; and

7. Notify the board immediately when the supervision of a real property associate has terminated; and

8. Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(g) A person otherwise qualified for supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

1. Prohibited from supervising associates;

2. Limited to the number of associates to supervise; or

3. Be required to take additional courses approved by the board before being permitted to supervise an associate.

(h) An associate shall submit to the board two (2) complete summary appraisal reports.

1. The first report shall be submitted to the board six (6) months following the date of issuance of the associate license. The second report shall be submitted to the board twelve (12) months following the date of issuance of the associate license.

2. If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(5)(a) A first time supervisor and a new associate shall attend the board-approved course in supervision practices within six (6) months of beginning supervision.

(b) All current supervisors and all current associates shall have completed the board-approved supervisor training course prior to July 1, 2009.

(c) To be eligible to provide supervision, a supervisor shall

attend the board-approved course in supervision practices every three (3) years.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by 201 KAR 30:050 and 060; and

(2) Applies to the board on the "Appraiser Licensure/Certification Application".

Section 4. Incorporation by Reference. (1) "Appraiser Licensure/Certification Application KREAB Form APP100 - Revised 1/09", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 14, 2012)**

201 KAR 30:180. Distance education standards.

RELATES TO: 324A.035(3)(d), (f)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),

(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of distance education courses for real estate appraisers.

Section 1. Definitions. (1) "Distance education course" means an organized instructional program presented through the use of computer technology, satellite transmission, or optical fiber transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means an organization or individual offering an education course via computer technology, satellite transmission, or optical fiber transmission.

Section 2. Limitations on Distance Education Courses. A distance education course that involves less than two (2) hours of credit shall not be approved.

Section 3. Standards for Distance Education Course Approval.

(1) To qualify for education credit, each distance education course, with information that specifically outlines the content of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the following:

(a) The "Distance Education Course Approval Application"; and

(b) The "Distance Education Instructor Application".

(3) Board approval shall be given to a distance education course which provides competent instruction in real estate appraisal to establish, maintain, and increase the student's skill, knowledge, and competency in real estate appraising.

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(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation.

(5) Course reviewers.

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field.

2. The appraisal content ~~reviewer~~reviewers shall ~~be an~~consist of one (1) educator who is academically qualified in appraisal subjects who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be consolidated into a recommendation for approval or disapproval and delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval, to the board from the International Distance Education Certification Center (IDECC) and the Appraiser Qualifications Board of the Appraisal/Appraiser Foundation, for each education course being applied for approval.

(7) Every distance education course shall include a final examination with a comprehensive assessment of the student's overall mastery of the materials presented in the course which~~that~~ shall be administered after the completion of the course by:

~~(a) Administered after the completion of the course by~~ A proctor approved by the board in accordance with Section 5 of this administrative regulation; ~~or~~and

~~(b) Electronically on a computer workstation or other device~~A comprehensive assessment of the student's overall mastery of the materials presented in the course.

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for education courses delivered via distance education may be obtained from the following:

(a) A college or university;

(b) A community or junior college;

(c) A real estate appraisal or real estate related organization;

(d) A state or federal agency or commission;

(e) A proprietary school; or

(f) An education provider approved by the board in accordance with 201 KAR 30:150.

(2) Credit shall be granted for continuing education distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

(a) Ad valorem taxation;

(b) Arbitration;

(c) Business courses related to the practice of real estate appraisal;

(d) Development cost estimating;

(e) Ethics and standards of professional practice;

(f) Land use planning, zoning, and taxation;

(g) Management, leasing, brokerage, and timesharing;

(h) Property development;

(i) Real estate appraisal;

(j) Real estate financing and investment;

(k) Real estate law;

(l) Real estate litigation;

(m) Real estate related computer applications;

(n) Real estate securities and syndication;~~or~~

(o) Real property exchange;

(p) Valuation of green buildings;

(q) Impact of seller concessions;

(r) The impact of personal property on the value of real property; or

(s) The impact of business value on real property value.

(3) Credit shall be granted for qualifying education distance education courses that cover Required Core Curriculum topics listed in 201 KAR 30:190, Section 8.

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with a minimum of five (5) years of experience and competency in the specific area of appraisal subject being taught;

(b) Hold a Certified Distance Education Instructor certification from the International Distance Education Certification Center;

(c) Not have been found by the board to have violated the requirements of KRS 324A.050 or 201 KAR Chapter 30; and

(d) Submit a copy of the instructor's curriculum vitae and appraisal certification.

(2) If an instructor is replaced or added, the credentials of the new instructor shall be submitted for approval before that instructor may teach a course.

(3)(a) A proctor shall be the board approved individual responsible for supervising the distance education course examination.

(b) Proctors shall not be subject to the same requirements as those for distance instructors specified in subsections (1) and (2) of this section.

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;

2. A licensed or certified real property appraiser;

3. Professionally affiliated with a real estate sales or real property appraisal office or business;

4. A member of the student's family; and

5. Professionally or personally associated with the student.

(d) A proctor may be selected from different professions, including:

1. A university, college, or community college professor or instructor;

2. A registered public librarian;

3. A public school administrator;

4. A Notary Public;

5. An attorney; or

6. A nominee of the provider approved by the board.

(e) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation:

a. With a picture ID;

b. With another identification document, including driver's license or student ID card; or

c. By familiarity;

2. Observe the student taking the exam;

3. Assure that the student does all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource;

4. Verify that the calculator used during the exam shall be a nonprogrammable, hand-held calculator;

5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination;

6. Provide the student with the URL for the course examination which shall be supplied by the provider if a request for the examination is received from the student;

7. Assure that the student adheres to the time limit requirement specified for the examination;

8. Assure that the examination shall be completed in one (1) sitting;

9.a. Assure that, if there is an interruption, the board shall be notified that the examination was interrupted and the reason for the interruption; and

b. The board, or its designee, shall approve the request to resume; and

10. Upon completion of the examination, submit a certificate which confirms that the proctor verified the identity of the student, that the examination was completed on the date assigned during the time permitted, and that the student has done all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or Web sites other than the examination.

Section 6. Course Delivery Medium. (1) A course delivery system shall contain provisions for interactivity including:

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(a) Instructor feedback with a response time of no more than two (2) business days from student lesson assignment, quiz submissions, and inquiries;

(b) Readily available opportunity for student inquiry and general questions concerning the course;

(c) Timely clarification of confusing points or errors in the study text; and

(d) Instructor's review of a student's activity in the course at least every thirty (30) days to assess progress determine the cause of potential delays in the student's completion of the course.

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery shall be used.

Section 7. Record Keeping and Reports. (1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Distance Education Student Independent Work Certification for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Distance Education Proctor's Examination Certification.

(4) A Distance Education Course Evaluation of the student's on-line experience during the course shall be submitted at the conclusion of the course.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and a satisfactory score on the final examination containing, at a minimum, the information on the Real Estate Appraisers Board form.

Section 8. Fees. A provider shall pay a \$100 nonrefundable fee in connection with each distance education course submitted for approval by the board for the review of the distance education delivery system and the course content.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Distance Education Course Approval Application", 2005;

(b) "Distance Education Student Independent Work Certification", 2005;

(c) "Distance Education Proctor's Examination Certification", 2005;

(d) "Distance Education Course Evaluation", 2005; and

(e) "Distance Education Instructor Application", 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (As Amended at ARRS, August 14, 2012)

201 KAR 30:190. Educational requirements for certification.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d) requires the board to establish by administrative regulations requirements for education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions including the education requirements promulgated by the Appraisers Qualifications Board. This administrative regulation establishes the education requirements for appraisers of real property in federally-related transactions that will be effective after December 31, 2007.

Section 1. Definitions. (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(2) "ASB" means the Appraiser Standards Board of the Appraisal Foundation.

(3) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(4) "Required Core Curriculum" means the list of course topics identified in Section 8(7) of this administrative regulation.

Section 2. (1) Credit for the qualifying education requirements set out in this administrative regulation may be obtained only from the following providers:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions;

(e) Proprietary schools;

(f) Providers approved by the board in accordance with 201 KAR 30:150; and

(g) The Appraisal Foundation or its boards.

(2) Experience may not be substituted for education.

Section 3. Criteria Specific to Qualifying Education. (1) A class hour shall be credited only for educational offerings with content that follows the Required Core Curriculum in Section 8(7) of this administrative regulation for each respective credential.

(2) The course content requirement may be general or it may be specific to a property type.

(3) A class hour may be obtained only if:

(a) The minimum length of the educational offering is at least fifteen (15) hours; and

(b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(7) USPAP courses.

(a) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(b) At least one (1) of the course instructors shall be an AQB Certified USPAP Instructor who is also a state certified appraiser.

(c) USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

Section 4. Qualifying Education for Associate Real Property Appraiser Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained his or her certification as a associate real property appraiser shall be required to fulfill the requirements of this section if the certification was not issued on or before December 31, 2007.

(2) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) class hours as specified in the required core curriculum Section 8[7] of this administrative regulation, which shall include at least fifteen (15) hours related to market analysis and highest and best use.

(3) An applicant shall pass:

(a) The Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as stated in Section 3(7) of this administrative regulation.

(4) All qualifying education shall be completed within the five (5) year period prior to the submission of an application for an Associate Real Property Appraiser credential.

Section 5. Qualifying Education for Licensed Real Property Appraisers Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained licensure shall be required to fulfill the requirements of this section if the license was not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be successful completion of 180 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination.

(4) Beginning January 1, 2015, an applicant for the licensed real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection (5) of this section are satisfied.

(5)(a) In lieu of the associate degree, prior to January 1, 2015, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets;

and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program (CLEP) examinations and issues a transcript for the examination, showing its approval, it shall be accepted as credit for the college course.

Section 6. Qualifying Education for Certified Residential Real Property Appraisers Certification Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified residential real property appraiser shall be required to fulfill the requirements of this section if the certification was not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as specified in the required core curriculum Section 8 of this administrative regulation[7].

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(4) Beginning January 1, 2015, an applicant for the certified residential real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection 5 of this section are satisfied.

(5)(a) In lieu of the associate degree, prior to January 1, 2015, an applicant for the certified residential real property certification

shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets;

and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination, showing its approval, it shall be accepted as credit for the college course.

Section 7. Qualifying Education for Certified General Real Property Appraiser Certification Effective January 1, 2008. (1) Regardless of the applicant's accrual of education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified general real property appraiser shall be required to fulfill the requirements of this section if the certification was not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as specified in the required core curriculum Section 8 of this administrative regulation[7].

(3) The applicant shall complete the 15-Hour National USPAP Course and examination.

(4) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(5) An applicant for the certified general real property certificate shall hold a bachelors degree or higher from an accredited college or university, unless the requirements of the subsection (6) of this section are satisfied.

(6)(a) In lieu of the bachelor's degree, prior to January 1, 2015, an applicant for the certified general real property appraiser credential shall successfully pass thirty (30) semester credit hours or its equivalent in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

1. English Composition;
2. Micro Economics;
3. Macro Economics;
4. Finance;
5. Algebra, Geometry, or higher mathematics;
6. Statistics;
7. Introduction to Computers-Word processing/spreadsheets;
8. Business or Real Estate Law; and
9. Two (2) elective courses in accounting, geography, ageconomics, business management, or real estate.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination showing its approval, it shall be accepted as credit for the college course.

Section 8. The required core curriculum and class hours for each of the types or classification of licensees or certificate holders shall be as follows:

(1) Associate Real Property Appraiser consisting of ninety (90) class hours.

(a) Basic appraisal principles-thirty (30) class hours.

(b) Basic appraisal procedures-thirty (30) class hours.

(c) Market analysis and highest and best use -fifteen (15) class hours.

(d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 180 class hours.

(a) Basic appraisal principles- thirty (30) class hours.

- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
- (d) Residential market analysis and highest and best use-fifteen (15) class hours.
- (e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.
- (f) Residential sales comparison and income approaches-thirty (30) class hours.
- (g) Residential report writing and case studies-fifteen (15) class hours.
- (h) Statistics, modeling and finance-fifteen (15) class hours.
- (i) Advanced residential applications and case studies-fifteen (15) class hours.
- (3) Certified residential real estate appraiser consisting of 200 class hours.
 - (a) Basic appraisal principles-thirty (30) class hours.
 - (b) Basic appraisal procedures-thirty (30) class hours.
 - (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
 - (d) Residential market analysis and highest and best use-fifteen (15) class hours.
 - (e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.
 - (f) Residential sales comparison and income approaches-thirty (30) class hours.
 - (g) Residential report writing and case studies-fifteen (15) class hours.
 - (h) Statistics, modeling and finance-fifteen (15) class hours.
 - (i) Advanced residential applications and case studies-fifteen (15) class hours.
 - (j) Appraisal subject matter electives-twenty (20) class hours.
- (4) Certified general real estate appraiser consisting of 300 class hours.
 - (a) Basic appraisal principles-thirty (30) class hours.
 - (b) Basic appraisal procedures-thirty (30) class hours.
 - (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
 - (d) General appraiser market analysis and highest and best use-thirty (30) class hours.
 - (e) Statistics, modeling and finance-fifteen (15) class hours.
 - (f) General appraiser site valuation and cost approach-thirty (30) class hours.
 - (g) General appraiser sales comparison approach-thirty (30) class hours.
 - (h) General appraiser income approach-sixty (60) class hours.
 - (i) General appraiser report writing and case studies-thirty (30) class hours.
 - (j) Appraisal subject matter electives-thirty (30) class hours.
- (5) The required core curriculum classes shall cover the topics set out in this subsection.
 - (a) Basic appraisal principles.
 - 1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.
 - 2. Legal consideration including forms of ownership, public and private controls, real estate contracts, and leases.
 - 3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic and physical influences.
 - 4. Types of value including market value and other value types.
 - 5. Economic principles including classical economic principles and application and illustrations of the economic principles.
 - 6. Overview of real estate markets and analysis including market fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.
 - 7. Ethics and how they apply in appraisal theory and practice.
 - (b) Basic appraisal procedures.
 - 1. Overview of approaches to value.
 - 2. Valuation procedures.
 - a. Defining the problem;
 - b. Collecting and selecting data;
 - c. Analyzing;
 - d. Reconciling and final value opinion; [and]
 - e. Communicating the appraisal;
 - f. Valuation of green buildings; and
 - g. Impact of seller concessions.
- 3. Property description.
 - a. Geographic characteristics of the Land or Site;
 - b. Geologic characteristics of the Land or Site;
 - c. Location and neighborhood characteristics;
 - d. Land/site considerations for highest and best use; and
 - e. Improvements-architectural styles and types of construction.
- 4. Residential applications.
 - (c) The 15-Hour National USPAP Course or its equivalent.
 - 1. Preamble and ethics rules.
 - 2. Standard 1.
 - 3. Standard 2.
 - 4. Standards 3 to 10.
 - 5. Statements and advisory opinions.
 - (d) Residential market analysis and highest and best use.
 - 1. Residential markets and analysis.
 - a. Market fundamentals, characteristics and definitions;
 - b. Supply analysis;
 - c. Demand analysis; and
 - d. Use of market analysis.
 - 2. Highest and best use.
 - a. Test constraints;
 - b. Application of highest and best use;
 - c. Special considerations;
 - d. Market analysis; and
 - e. Case studies.
 - (e) Residential appraiser site valuation and cost approach.
 - 1. Site valuation.
 - a. Methods; and
 - b. Case studies.
 - 2. Cost approach.
 - a. Concepts and definitions;
 - b. Replacement or Reproduction cost new;
 - c. Accrued depreciation;
 - d. Methods of estimating accrued depreciation; and
 - e. Case studies.
 - (f) Residential sales comparison and income approaches.
 - 1. Valuation principles & procedures-sales comparison approach.
 - 2. Valuation principles & procedures-income approach.
 - 3. Finance and cash equivalency.
 - 4. Financial calculator introduction.
 - 5. Identification, derivation and measurement of adjustments.
 - 6. Gross rent multipliers.
 - 7. Partial interests.
 - 8. Reconciliation.
 - 9. Case studies and applications.
 - (g) Residential report writing and case studies.
 - 1. Writing and reasoning skills.
 - 2. Common writing problems.
 - 3. Form reports.
 - 4. Report options and USPAP compliance.
 - 5. Case studies.
 - (h) Statistics, modeling and finance.
 - 1. Statistics.
 - 2. Valuation models (AVM's and mass appraisal).
 - 3. Real estate finance.
 - (i) Advanced residential applications and case studies.
 - 1. Complex property, ownership and market conditions.
 - 2. Deriving and supporting adjustments.
 - 3. Residential market analysis.
 - 4. Advanced case studies.
 - (j) General appraiser market analysis and highest and best use.
 - 1. Real estate markets and analysis.
 - a. Market fundamentals, characteristics and definitions;
 - b. Supply analysis; and
 - c. Demand analysis.
 - 2. Highest and best use.
 - a. Test constraints;
 - b. Application of highest and best use;

- c. Special considerations;
- d. Market analysis; and
- e. Case studies.
- (k) General appraiser sales comparison approach.
 1. Value principles.
 2. Procedures.
 3. Identification and measurement of adjustments.
 4. Reconciliation.
 5. Case studies.
- (l) General appraiser site valuation and cost approach.
 1. Site valuation.
 - a. Methods; and
 - b. Case studies;
 2. Cost approach.
 - a. Concepts and definitions;
 - b. Replacement or Reproduction cost new;
 - c. Accrued depreciation;
 - d. Methods of estimating accrued depreciation; and
 - e. Case studies;
- (m) General appraiser income approach.
 1. Overview.
 2. Compound interest.
 3. Lease analysis.
 4. Income analysis.
 5. Vacancy and collection loss.
 6. Estimating operating expenses and reserves.
 7. Reconstructed income and expense statement.
 8. Stabilized net operating income estimate.
 9. Direct capitalization.
 10. Discounted cash flow.
 11. Yield capitalization.
 12. Partial interests.
 13. Case studies.
- (n) General appraiser report writing and case studies.
 1. Writing and reasoning skills.
 2. Common writing problems.
 3. Report options and USPAP compliance.
 4. Case studies.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: May 25, 2012

FILED WITH LRC: June 15, 2012 at 9 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

TOURISM, ARTS AND HERITAGE CABINET
Department of Parks
(As Amended at ARRS, August 14, 2012)

304 KAR 1:040. Campgrounds.

RELATES TO: KRS 148.021, 148.029, 148.051, 148.056, 148.991

STATUTORY AUTHORITY: KRS 148.021(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.021(8) authorizes the Commissioner of Parks to promulgate administrative regulations relating to the operation of state park campgrounds. This administrative regulation establishes requirements for the orderly operation of state park campgrounds.

Section 1. At each state park campground, requirements established in this section shall be posted and observed~~fall state park campgrounds the following rules shall be posted and observed:~~

(1) Camping, unless otherwise authorized by the park manager due to a special event creating an overflow, shall be restricted to the campground.

(2)(a) A tent, a camping vehicle, a recreational vehicle, camping equipment, or other personal property shall not be left unattended longer than twenty-four (24) consecutive hours without written permission from the park manager.

(b) Written permission pursuant to paragraph (a) of this subsection shall be based upon the best interests of the park.

(3)(a) A pet[Pets] shall:

1. Be kept on a leash or otherwise restrained at all times;
2. Have current inoculations for rabies as prescribed by the campers' state of residence; and
3. Not be tied to trees or shrubs.

(b) A camper[Campers] shall clean up after the camper's pet[their pets].

(c) Vehicles or equipment shall not be washed within the campground.

(4)(5)] Quiet time begins at 11 p.m. Campers shall not have visitors after 11 p.m.

(5)(6)] Campers shall not:

- (a) Hang lanterns on trees or shrubs;
- (b) Drive an object into a tree, shrub, sign, building, or other object or structure in the campground; or
- (c) Trench or dig in the campground.

(6) If the camper has a permit, a golf cart may be used on a state park campground(7) Golf carts may be used on state park campgrounds with the appropriate permit].

(a) A person may purchase a golf cart permit at the campground store or another[any other] location designated by the park manager for twenty-five (25) dollars, and the permit shall be valid for seven (7) consecutive days.

(b) A person may purchase an annual golf cart permit at the campground store or another[any other] location designated by the park manager for \$100[one hundred (100) dollars] and the permit shall be valid April 1 through[-] October 31.

(c) Each permit[All permits] shall be displayed prominently on the golf cart in a location designated by the park manager.

(d) A golf cart shall not be parked or left in a no-parking zone, a prohibited area, or in an[any] area that would block traffic.

(e) A state park employee or agent may use a golf cart[State park employees and agents may use golf carts] without a permit on the grounds of the state park campground if the employee or agent is[state park campgrounds if] acting on behalf of a state park.

(7)(8)](7)] (a) Motorbikes, motorcycles, motor scooters, and mopeds~~[off-road vehicles]~~ in the campground shall be restricted to regular roadways for use in entering and exiting only.

(b) Four (4) wheelers, all terrain vehicles, utility type vehicles, or similar vehicles may be prohibited within portions of the campground in areas designated by the park manager.

(c)(4)] Campers and visitors shall not joy ride on a[any] motorized vehicle[four (4) wheelers, golf carts, mopeds, or similar vehicles] within the campground.

(d)(e)] A driver[Drivers] shall be at least sixteen (16) years of age and have a valid driver's license.

(e)(d)] A vehicle[Vehicles] shall be properly muffled~~[muffle red]~~ and shall stay on paved roads.

(f)(e)] An exception shall be made for the use of a motorized vehicle by a person with a disability who:

1. Is using a motorized vehicle for travel to or from campground facilities; and
2. Has proof of disability such as an appropriate identification card or vehicle license plate.

(8)(9)](8)] (a) Campsites may be reserved by telephone or via the Internet.

(b) A campsite[Campsites] not reserved shall be available on a first-come, first-served basis.

(c) Check-in time shall be[is] 2 p.m., and check-out time shall be[is] 1 p.m.

(9)(10)](9)] (a) There shall be a fourteen (14) day maximum stay unless granted a waiver by the park manager for good cause due to an emergency or business necessity.

(b) A camper may be asked to move to facilitate maintenance on the site.

(c) A camper[Campers] shall not homestead.

(10)(11)](10)] (a) A camper shall register at the entrance gate or designated area and shall receive a campsite assignment from the gate attendant, which shall be noted with a camping permit.

(b) A camper shall not change a campsite assignment, unless permission to move is granted by the gate attendant.

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(c) If a camper is~~[campers are]~~ permitted to select a site of the camper's choice, the camper~~[their choice, they]~~ shall return immediately to the gate attendant and identify the chosen site.

(11)(a)(12)~~((11))~~ Central service buildings and other facilities in the camping area shall be for campers and their guests only.

(b) Anyone other than a registered camper or guest~~[Anyone other than registered campers or guests of registered campers]~~ shall not picnic, sightsee, or have reunions in the campground.

(12)(13)~~((12))~~ Fires shall be restricted to fire rings in designated areas only and shall be attended at all times.

(13)(14)~~((13))~~ (a) Vehicles shall be parked in campsite spaces and parking lots and shall display a "car pass" or "visitor pass."

(b) No more than two (2) vehicles shall be~~are~~ permitted per campsite, including recreational vehicles (RV), except as permitted pursuant to subsection (15)(b) of this section~~[under subsection (16)(b) of this section]~~.

(c) Vehicles shall not block adjacent sites or roadways.

(14)(15)~~((14))~~ Tables shall not be moved from site to site.

(15)(16)~~((15))~~ (a) Two (2) groups or parties may share one (1) campsite.

(b) If two (2) groups or parties agree to share one (1) campsite, each shall be issued a camping permit, if two (2) tents, campers, or recreational vehicles are used.

(16)(17)~~((16))~~ (a) A camper shall keep the camping site~~[Campers shall keep their sites]~~ clean and dispense of refuse in the receptacles provided.

(b) Campers may camp on grass only with prior permission of the gate attendant or park manager.

(17)(18)~~((17))~~ Alcoholic beverages shall not be publicly displayed.

(18)(19)~~((18))~~ Fireworks shall not be allowed at the campground.

(19)(20)~~((19))~~ Campers shall:

(a) Report loss, theft, accident, or disturbance to gate attendant; and

(b) Turn in all found property to gate attendant.

(20)(21)~~((20))~~ (a) A camper shall not deface or damage park property.

(b) Failure to comply with paragraph (a) of this subsection may result in arrest, fine, or eviction from the park property.

(21)(22)~~((21))~~ All visitors shall sign in and out, display a visitor pass, and obey all campground rules.

(22)(23)~~((22))~~ More than two (2) visitor passes shall not be issued per site.

(23)(24)~~((23))~~ (a) A camper or a camper's guest shall not engage in fighting; threatening or abusive language; or lewd acts, or conduct that causes public inconvenience, annoyance, alarm, unreasonable noise, or is disturbing to campground patrons.

(b) Failure to comply with paragraph (a) of this subsection may result in arrest, fine, or eviction from the park property.

Section 2. Sanctions. A~~[Any]~~ person identified by the park manager as being in violation of this administrative regulation may:

(1)(a) Have his or her permit~~[permit(s)]~~ revoked. If the permit is revoked pursuant to this subsection, the permit fee shall be nonrefundable.

(2)(b) Have his or her four (4) wheeler, all terrain vehicle, utility type vehicle, moped, golf cart, horse trailer, or ~~[any]~~ similar vehicle towed to the nearest licensed towing facility; and

(3)(c) Be removed from the park premises. ~~[The park manager reserves the right to remove any camper or camper's guest from the premises for violation of this administrative regulation.]~~

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at noon

CONTACT PERSON: Leigh Powers, Legal Counsel, Tourism, Arts and Heritage Cabinet, 500 Mero Street, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4270.

TOURISM, ARTS AND HERITAGE CABINET
Department of Parks
(As Amended at ARRS, August 14, 2012)

304 KAR 1:080. Kentucky Proud™ Promotion Program.

RELATES TO: KRS 45A.645, 260.016

STATUTORY AUTHORITY: KRS 148.830 ~~–[to]~~ 148.840

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.830 requires the Commissioner of Parks to promulgate administrative regulations relating to the promotion of Kentucky-grown agricultural products to operate in conjunction with the Kentucky Proud™ Program. This administrative regulation establishes guidelines for the promotion program.

Section 1. ~~[The Kentucky Department of Parks, in cooperation with the Kentucky Department of Agriculture, shall promote and identify Kentucky grown and Kentucky Proud™ Products in its state resort park restaurants, gift shops, concessions, and golf courses.~~

Section 2. The Department of Parks' promotion program shall:

(1) Encourage the Department of Parks to utilize local vendors, if~~[when]~~ feasible and cost effective;

(2) Include the Kentucky Proud™ logo on all park dining menus if~~[when]~~ those products are utilized;

(3) Include the Kentucky Proud™ logo on park uniforms if~~[when]~~ feasible and applicable;

(4) Promote special events that feature Kentucky Proud™ products;

(5) Identify Kentucky produced products in park gift shops;

(6) Encourage contract vendors to offer Kentucky Proud™ products; and

(7) Promote the program through its press releases, social media, and Web site.

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at noon

CONTACT PERSON: Leigh Powers, Legal Counsel, Tourism, Arts and Heritage Cabinet, 500 Mero Street, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4270.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, August 14, 2012)

405 KAR 10:015. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, [350.110,] 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, [350.110,] 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance bonds for surface coal mining operations. This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall~~[must]~~ remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds~~[,]~~ and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work is~~[must be]~~ performed by the cabinet, taking into consideration such things as topography, geology, future land use, and the difficulty of reclamation.

Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or extend an underground shaft, tunnel, or operation~~[any underground shafts, tunnels, or operations]~~ prior to receipt of approval from the cabinet of a performance bond covering an area~~[areas]~~ to be affected by surface operations and

facilities.

(2) After an application for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations has been approved pursuant to/under 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet.

(a) The applicant shall file the Performance Bond, Form SME-42, for an operation on land/June 1999, for operations on lands other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, for an operation on federal land.

(b)/June 1999, for operations on federal lands.] The performance bond shall be conditioned upon compliance with/the faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met.

(c) The amount, duration, type, conditions, and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) A permit shall not/No permit shall be revised or amended to include additional area unless the liability of the current bond is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or pursuant to/under a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

- (a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or
- (b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as established/provided in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the conditions of the permit and shall cover the entire permit area or the/such incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period established/provided in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason.

1./including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability.] Surety bond coverage for permitted lands not disturbed shall/may be cancelled only with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation.

a. A cancellation/Such notice shall be by certified mail.

b. Cancellation shall not be effective for lands subject to bond coverage that/which are affected after receipt of notice, but prior to approval by the cabinet.

c. The cabinet shall approve a/The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation.

2. The cabinet shall advise the surety, within thirty (30) days

after receipt of a notice to cancel bond, if/whether the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of a/any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements that/which could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations pursuant to the bond,/under the bond for any reason the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph/However, nothing herein shall relieve the permittee of responsibility pursuant to/under the permit or the surety of liability on its bond.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall/may suspend the permit until acceptable bond is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, or/and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as established in 405 KAR Chapter 10/provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, July 2000, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and the cabinet shall not in any circumstance/in no event shall the cabinet accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens that/which it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet upon an offering of collateral/at the time the collateral is offered.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) A letter/Letters of credit shall be subject to the following conditions:

(a) 1. The letter shall/The letter may only be issued by a bank organized or authorized to do business in the United States.

2. A/Any letter of credit issued by a non-Kentucky lending institution shall/must be confirmed by an approved Kentucky lending institution.

(b) ~~A letter[Letters]~~ of credit shall be irrevocable.

(c) The letter ~~shall[must]~~ be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72[~~July 1994~~], and the Confirmation of Irrevocable Letter of ~~Standby Credit, form[Credit, For]~~ SME-72-A, [~~July 1994~~], shall be submitted to the cabinet, as necessary.

(d) 1. The issuer shall give prompt notice to the permittee and the cabinet of ~~[any]~~ notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging ~~[any]~~ violations of regulatory requirements ~~that[which]~~ could result in suspension or revocation of the issuer's charter or license to do business. ~~[;]~~

2. In the event the issuer becomes unable to fulfill its obligations ~~pursuant to[under]~~ the letter of credit ~~[for any reason]~~, notice shall be given immediately to the permittee and the cabinet. ~~[;]~~

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet.

~~a. Nothing in this paragraph[However, nothing herein]~~ shall relieve the permittee of responsibility ~~pursuant to[under]~~ the permit or the issuer of liability on the letter of credit.

~~b.~~ The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

~~c.~~ If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

~~d.~~ Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

~~e.~~ If an acceptable bond has not been posted by the end of the period allowed, the cabinet ~~shall[may]~~ suspend the permit until acceptable bond is posted.

(8) ~~If[When]~~ a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced ~~pursuant to[under]~~ 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types ~~established[which are set forth]~~ in this section.

(2) The performance bond shall be ~~a[either]~~:

(a) ~~[A]~~ Surety bond;

(b) ~~[A]~~ Collateral bond;

(c) ~~[A]~~ Combination of the above bonding types; or

(d) ~~Bond[Bonds]~~ filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595[;] and 350.700 through 350.755).

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond ~~shall be a bond that[is a bond which]~~ covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit.

~~(a) Liability pursuant to[Liability under]~~ the bond shall extend to every part of the permit area at all times.

~~(b)~~ Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall ~~not be a[be no]~~ release of all or part of the bond amount for completion of a particular phase of reclamation on ~~a[any]~~ part of the permit area

~~pursuant to[under]~~ 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding ~~shall be[is]~~ a method of bonding in which the permit area ~~shall be[is]~~ divided into individual increments, each of which is bonded separately and independently, and for which bond ~~shall be[is]~~ filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments ~~[which shall be]~~ subject to approval by the cabinet.

~~1.~~ Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary.

~~2.~~ If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment.

~~3.~~ These increments shall be clearly identified on maps submitted in the permit application ~~pursuant to[under]~~ 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required ~~pursuant to[under]~~ Section 7 of this administrative regulation.

(c) The permittee shall not engage in ~~[any]~~ surface coal mining and reclamation operations on ~~an[any]~~ increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. ~~Credit shall not[No credit shall]~~ be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet ~~pursuant to 405 KAR 16:030~~.

(e) The bond amount for an increment shall be released or forfeited independently of ~~another[any other]~~ increment of the permit area, and liability ~~pursuant to[under]~~ the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall ~~not be a[be no]~~ release of bond for completion of a phase of reclamation on ~~[any]~~ part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) ~~If[When]~~ the bond for an increment is completely released ~~pursuant to[under]~~ 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, ~~in which case the liability that[if the liability which]~~ has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond ~~pursuant to[under]~~ 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts. (1) In determining the bond amount, the cabinet shall estimate the cost to the cabinet if ~~the cabinet[it]~~ had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal

mining and reclamation operations pursuant to/under KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), and 405 KAR 8:040, Section 24(4);

(b) The additional estimated costs to the cabinet that/which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Such Other cost information as may be required by or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation shall/will be used in any issued permit.

(3) The cabinet shall review the bonding amounts identified in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) \$75,000 for the entire surface area under one (1) permit;

(2) \$75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) \$50,000 for a permit or increment operating on previously mined areas, as defined in 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) \$10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the following rates for a/any permit issued by the Division of Mine Permits:

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at \$2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate of \$7,500 per acre and each fraction thereof.

(3) a An embankment sediment control pond shall be bonded at a rate of \$10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is is/a located off-bench is and is/b located downstream and outside the proposed mining or spoil storage area.

b/c This rate may be applied to partial embankment structures as deemed necessary by the cabinet to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, in accordance with subsection/discussed in paragraph (6) of this section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on previously mined areas, as defined in 405 KAR 8:001, Section 1(86), shall be bonded at rate of \$2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations not otherwise addressed in subsections/paragraphs (1) through (5) of this section shall be bonded at the rate of \$3,500 per acre and each fraction thereof.

(7) a For permits that have been identified as a producer of long-term treatment drainage, the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by

twenty years.

(b) The cost estimate shall be/is subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee's estimate.

(c) In lieu of this calculation, the permittee may submit a remediation plan to be approved by the cabinet for the areas deemed to be producing substandard drainage.

1. The remediation plan shall demonstrate that substandard discharge shall/will be permanently abated by land reclamation techniques prior to phase II bond release.

2. If the/If department rejects the plan, the permittee shall submit the additional acid mine drainage bond previously established/described in this section.

Section 9. Period of Liability. (1) Liability pursuant to/under performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration, and abatement work required of persons who conduct surface coal mining and reclamation operations pursuant to/under requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from any further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability pursuant to/under a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation, or other work.

a The period of liability shall begin again upon/whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release.

b Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet.

c These/Such areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure.

d Access to the separated areas for remedial work may be included in the area pursuant to/under extended liability if necessary/deemed necessary by the cabinet.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation, or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions that/which the permittee is required to take pursuant to/under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved pursuant to/under 405 KAR 16:210. Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible pursuant to/under the permit shall not be covered by the bond.

Section 10. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet if the:

a/When-the Acreage in the permit area or increment is either increased or decreased; or

b/When-the Cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. If/When it is determined that an adjustment pursuant to/under this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested such a notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 405 KAR 7:091 and 405-KAR 7:092 shall not apply to the conduct of the conference.

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(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof ~~if the/where such~~ acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. ~~[However,]~~ A reduction due to such ~~a~~ deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve ~~a[any]~~ reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved ~~pursuant to/under~~ 405 KAR 16:020, Section 2, the applicant shall submit to the cabinet supplemental assurance in the amount ~~established/set forth~~ in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required ~~pursuant to/under~~ 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, SME-42 (SA) ~~[, July 1994]~~. This form shall be accompanied by the Escrow Agreement form (for use with Supplemental Assurance form only), SME-64 (SA) ~~[, July 1994]~~.

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) ~~[However,]~~ The requirements of Sections 2, 3, and 5 of this administrative regulation ~~and[,]~~ 405 KAR 10:035 ~~[,]~~ and ~~[405 KAR]~~ 10:050 shall apply to supplemental assurance.

(2) Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section 2(3), the amount required shall be \$150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit ~~pursuant to/under~~ 405 KAR 16:020, Section 2(3). If an additional pit or pits are approved, the amount shall be \$150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to of 405 KAR 16:020, Section 2(4), the amount required shall be \$150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation ~~pursuant to/under~~ of 405 KAR 16:020, Section 2(4). ~~If[any]~~ additional multiple seam operations are approved, the amount shall be \$150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance ~~established/set forth~~ in subsection (2) of this section.

(5) Area mining. The amount required shall be \$150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit ~~pursuant to/under~~ 405 KAR 16:020, Section 2(1). If an additional pit or pits are approved, the amount shall be \$150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and

graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Performance Bond, Form SME-42", June 1999;

(b) "Irrevocable Standby Letter of Credit, Form SME-72", July 1994;

(c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994;

(d) "Supplemental Assurance, SME-42 (SA)", July 1994;

(e) "Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994;

(f) "Escrow Agreement, Form SME-64", October 2008;

(g) "Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154", May 2012; and

(h) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", June 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

(As Amended at ARRS, August 14, 2012)

405 KAR 10:030. General requirements for~~[Types, terms and conditions of performance bonds and]~~ liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, ~~[350.110,]~~ 350.465

STATUTORY AUTHORITY: KRS ~~[Chapter 43A,]~~ 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 ~~[in pertinent part]~~ requires the cabinet to specify types, terms, and conditions for ~~[performance bonds and]~~ liability insurance ~~for surface coal mining operations~~. ~~[This administrative regulation sets forth the various types and conditions which the cabinet will accept in satisfaction of the bonding requirements. This administrative regulation sets forth that bonds shall be payable to the cabinet and other conditions. This administrative regulation specifies certain alternative types of bonds, in addition to the surety bond, and the conditions upon which the cabinet will accept them.] This administrative regulation specifies the terms and conditions of liability insurance~~ **for surface coal mining operations**.

Section 1. Requirement to File a Certificate of Liability Insurance. Each applicant for a permit shall submit to the cabinet, as part of the permit application, a certificate issued by an insurance company authorized to do business in Kentucky. The amount, duration, form, conditions, and terms of this insurance shall comply with/conform to/ Section 2 of this administrative regulation. ~~[Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section:~~

~~(2) The performance bond shall be either:~~

~~(a) A surety bond;~~

~~(b) A collateral bond;~~

~~(c) A combination of the above bonding types; or~~

~~(d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755).~~

~~Section 2. Terms and Conditions of Performance Bond. (1)~~

The performance bond shall be in an amount determined by the cabinet as provided in 405 KAR 10:020, Sections 1 and 2.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to 405 KAR 10:010, Section 3(2).

(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020, Section 3.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 405 KAR 10:020. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the surety of liability on its bond. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of de-

posit unless it is issued by a FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution.

(b) Letters of credit shall be irrevocable.

(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand.

(d)1. The issuer shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.

(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to be all parties, which sets forth the agreed distribution of bond amounts to be released or reduced under 405 KAR 10:040 and 405 KAR 10:020, Section 4, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

Section 3. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.]

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, August 14, 2012)

405 KAR 16:020. Contemporaneous reclamation.

Section 2.[4.] Terms and Conditions for Liability Insurance. (1) The applicant shall submit, as a part of the permit application upon[at the time of] bond submission, a certificate issued by an insurance company authorized to do business in Kentucky certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought.

(a) The certification shall be on Certificate of Liability Insurance, Form SME-29.

(b)[, October 2008]~~a form prescribed by the cabinet[.]~~ The policy shall provide for personal injury and property damage protection in an amount adequate to compensate for all personal injury and property damage resulting from surface coal mining and reclamation operations, including damage caused by the use of explosives and damage to water wells.

(c) Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

(2) The policy shall be maintained in full force during the term of the permit or [any] renewal thereof, and during the liability period necessary to complete all reclamation operations pursuant to[under] 405 KAR Chapters 7 through 24, until full bond release has been granted.

(3) The policy shall include a clause requiring that the insurer notify the cabinet if[whenever] substantive changes are made in the policy, including [any] termination or failure to renew. This notice shall be made on the Notice of Cancellation, Nonrenewal or Change of Liability Insurance[, Form SME-30, June 2005].

(4) In the event the insurer becomes unable to fulfill its obligations pursuant to[under] the policy, notice shall be given immediately to the permittee and the cabinet.

(5) Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without insurance coverage and shall promptly notify the cabinet.

(a) Nothing in this subsection[However, nothing herein] shall relieve the insurer of liability on its policy.

(b) The cabinet shall issue a notice to the permittee specifying a reasonable period to replace such coverage, not to exceed ninety (90) days.

(c) If an adequate insurance coverage is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

(d) Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable insurance coverage has been posted.

(e) If an acceptable insurance coverage has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable insurance coverage is posted.

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

(a) "Certificate of Liability Insurance, Form SME-29", October 2008; and

(b) "Notice of Cancellation, Nonrenewal or Change of Liability Insurance, Form SME-30", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

RELATES TO: KRS 350.062, 350.093, 350.100,~~[350.110,]~~ 350.405, 350.410, 350.435, 350.450, 350.465, 30 C.F.R. ~~[Parts]~~ 730-733, 735, 816.100, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS~~[Chapter 13A,]~~ 350.028, 350.093, 350.100, 350.465, 30 C.F.R. Parts 730-733, 735, 816.100, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350~~[in pertinent part]~~ requires the cabinet to promulgate~~[rules and]~~ administrative regulations establishing performance standards for protection of people and property, land, water, and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation establishes[sets forth] requirements for keeping reclamation operations, including backfilling, grading, soil preparation, and revegetation, contemporaneous with mining operations.

Section 1. Definition. [(1)] "Completed reclamation" means completion of reclamation phase I as established in[defined by] 405 KAR 10:040, Section 2(4)(a).

Section 2. General. Reclamation operations, including~~[but not limited to]~~, backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching, and revegetation of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations and in accordance with this administrative regulation.

Section 3.~~[2.]~~ Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time and distance criteria established[set forth] in the approved plan for backfilling and grading shall take precedence over corresponding criteria in this administrative regulation.

(1) The approved backfilling and grading plan may specify time and distance criteria less restrictive than those established[set forth] in this administrative regulation, and may allow more than one (1) pit per permit area, if the permittee has demonstrated through detailed written analysis in the permit application that other criteria or additional pits are essential to the proposed mining and reclamation operations, and if the cabinet has determined that use of] the requested criteria or additional pits will not likely cause adverse environmental impacts.

(2) If alternative distance limits are approved or additional pits allowed, then the applicant shall provide supplemental assurance in accordance with 405 KAR 10:015, Section 11~~[Section 6 of this administrative regulation]~~.

(3)[(1)] Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area~~[,]~~ and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(b) There shall be only one (1) pit allowed per permit area.

(4)[(2)] Auger mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial excavation for the purpose of removal of topsoil or overburden at that location.

(a) Auger holes shall be sealed as required by 405 KAR 20:030.

(b) Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) days and by not more than 1,500 linear feet.

(c) There shall be only one (1) auger mining operation allowed per permit area.

(5)[(3)] Contour mining.

(a) Coal removal in a given location shall be completed within sixty (60) calendar days after the initial excavation for the purpose of removal of topsoil or overburden at that location.

(b) Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1,500 linear feet.

(c) There shall be only one (1) pit allowed per permit area.

~~(6) [(4)]~~ Multiple-seam contour mining.

(a) If overlapping multiple cuts producing a benched highwall are made to remove more than one (1) coal seam at a given location, backfilling and grading at that location shall be completed within sixty (60) calendar days after removal of the last coal seam at that location and shall follow the advancing cut of the last coal seam by not more than 1,500 feet.

(b) Removal of all coal seams shall proceed as concurrently as possible and in a timely manner, in order to minimize the time period in which disturbed areas are exposed prior to reclamation.

(c) There shall be only one (1) multiple seam operation allowed per permit area.

~~(7) [(5)]~~ Combined contour mining and auger mining.

(a) Coal removal by contour mining at a given location shall be completed within the time frame established in subsection (5) or (6) [specified in subsection (3) or (4)] of this section as appropriate.

(b) Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location.

~~(c) 1.~~ Sealing of auger holes and backfilling and grading shall then be completed as required in subsection ~~(4) [(2)]~~ of this section.

2. There shall be only one (1) contour mining pit and one (1) auger mining operation allowed per permit area.

~~(8) [(6)]~~ Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area. If the mountaintop removal operation begins by mining a contour cut around all or a part of the mountaintop, the time and distance limits for contour mining shall apply to that cut unless alternative limits are approved pursuant to [under] Section 3 [Sections 2 and 6] of this administrative regulation and 405 KAR 10:015, Section 11.

~~(9) [(7)]~~ All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 4. [3.] Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation and in accordance with 405 KAR 16:200, Section 3.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) of this section may exceed thirty (30) calendar days only if [when] specifically authorized in the approved plans for topsoil handling and revegetation or if [when] authorized pursuant to Section 5 or 6 [Sections 4 or 5] of this administrative regulation.

Section 5. [4.] Deferments. (1) The cabinet may allow a permittee to defer the time criteria for coal removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that the deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, or [and] other conditions clearly beyond the permittee's control; or [.]

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050, Section 7, and 405 KAR 20:020; or [.]

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section shall be made through submittal of the Coal Marketing Deferment, MPA-10, which is incorporated by reference in 405 KAR 8:010, Section 26 [in the form prescribed by the cabinet]. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that [no] environmental

damage shall not [will] occur during the period of deferment.

(a) Application for a deferment pursuant to subsection (1)(a) of this section for adverse conditions shall be made in writing and shall include documentation of the adverse conditions beyond the operator's control and demonstration of impossibility of conducting coal removal and contemporaneous reclamation in a timely manner due to those conditions.

1. The application shall be filed at the appropriate regional office of the department.

2. Upon a successful demonstration that the adverse conditions exist, the regional administrator may grant a reclamation deferment for a maximum of thirty (30) days.

~~3. [on a form provided by the department.]~~ At least seven (7) days prior to the expiration of the deferment, the permittee may request, in writing, an additional extension, again stating the reason for the request and providing [any] appropriate additional documentation.

4. The regional administrator may renew the original extension once upon request, but [however] the renewal shall not exceed thirty (30) days.

5. The [Any] need for additional time shall be demonstrated to the Division of Mine Reclamation and Enforcement [Field Services] in Frankfort by written request.

6. The request shall initially be submitted to the regional office at least two (2) weeks prior to the expiration of the renewed deferment.

7. Upon recommendation of the regional administrator, the director of the Division of Mine Reclamation and Enforcement [Field Services] shall issue his decision on or before expiration of the deferment.

(b) Application for a deferment pursuant to subsection (1)(b) of this section for combined surface and underground mining shall be made according to 405 KAR 8:050, Section 7.

(c) Application for a deferment pursuant to subsection 1(c) [(1)(a)] of this section for coal marketing problems shall be made according to Section 6 [5] of this administrative regulation.

(3) The applicant has the burden of establishing the need for a deferment.

(a) The applicant shall demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation shall [will] be met during the period of deferment.

(b) The permittee shall continue to comply with the time limits of the coal removal and contemporaneous reclamation requirements until the deferment is issued.

(4) (a) Reclamation deferments shall [may] be approved for a period reasonably related to the specified conditions justifying the deferment.

(b) The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except if [where] approved combined mining is being carried out under subsection (1)(b) of this section.

(5) The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

Section 6. [5.] Additional Requirements for Deferments for Coal Marketing Problems. Upon written application conforming to the requirements of KRS Chapter 350 and 405 KAR 7 through 24 [the statutes and administrative regulations], the cabinet may grant a deferment of coal removal and contemporaneous reclamation for a period not to exceed thirty (30) months pursuant to KRS 350.093.

(1) Application requirements.

(a) ~~[An applicant for a deferment of coal removal and contemporaneous reclamation shall submit an application on a form specified by the cabinet.]~~ An application shall contain at least the following:

1. A demonstration of the need for the deferment, including documentation of the coal marketing problem; or [.]

2. A plan consisting of a detailed narrative description of the method by which the applicant shall conform to each of the performance standards established [specified] in subsection (2) of this

section.~~;~~]

3. A detailed schedule for implementation of each of the performance standards of subsection (2) of this section, which may not extend beyond thirty (30) days from the issuance by the cabinet of a deferment from coal removal and contemporaneous reclamation.~~;~~]

4. An itemized estimate of the total cost of reclamation of the area proposed for deferment. The estimate shall, at a minimum, include calculations and supporting data demonstrating the volume of spoil necessary for backfilling and grading all open pits and highwalls, the cost of backfilling those pits and highwalls, the cost of final grading and revegetation of the entire disturbed area, and the cost of moving necessary reclamation equipment to the job site.~~;~~ and~~;~~]

5. Written consent of the surety for the deferment if the permit area or increment is covered by a surety bond.

(b) The applicant shall place an advertisement in the newspaper of largest bona fide circulation in each county in which the permit is located.

1. The advertisement shall be published within ten (10) days after the date the application is submitted to the cabinet and shall contain, at a minimum, the location of the area for which coal removal and contemporaneous reclamation are proposed to be deferred, the reason for which the deferment is sought, and the duration of the requested deferment.

2. The advertisement shall also indicate that the deferment shall not exceed six (6) months initially, but may be renewed for additional six (6) months periods up to a maximum of thirty (30) months.

3. The applicant shall submit proof of the advertisement to the cabinet within fifteen (15) days after application for the deferment.

4. The application shall not be deemed complete until the proof is submitted.

(c) The applicant shall also notify, in writing, the owners of the surface of the permit area and adjacent areas as listed on the permit application.

1. The applicant shall provide proof of this notice to the cabinet.

2. The application shall not be deemed complete until the proof is submitted. Within five (5) days after receipt of a complete application, the cabinet shall notify those other persons, if any, who it determines to have an interest that[which] is or may be adversely affected by the proposed deferment.

(d) A[Any] person with an interest that[which] is or may be adversely affected may file written comments and objections to the application for a deferment. The comments or objections shall be filed within ten (10) days after receipt of the written notice or publication of the newspaper notice, whichever is later.

(e) Upon receipt of the application, the cabinet shall examine the data and calculations submitted pursuant to subsection (1)(a)4 of this section and shall cause an inspection of the area subject to the proposed deferment to be made by an authorized agent of the cabinet.

1. Based upon the data supplied and the inspection, the Division of Permits of the cabinet shall determine if[whether] the existing bond for the entire permit or increment is sufficient for the cabinet to completely reclaim the entire disturbed area of the permit or increment at the expiration of the deferment.

2. If the existing bond is insufficient, then the cabinet shall require, prior to approving the deferment, that the applicant file [such] additional bond [as is determined by the cabinet to be] sufficient for the cabinet to completely reclaim the disturbed area.

(f) The cabinet shall consider the application, [any] other submittals from the applicant, and [any] comments received from the public, and shall render a final decision on the application within thirty (30) days of receipt of the complete application.

1. If the [cabinet determines that the] applicant has satisfied the requirements for a deferment from coal removal and contemporaneous reclamation established[contained] in KRS 350.093(2) and in this administrative regulation, then the cabinet shall grant a deferment to the applicant for a period not to exceed six (6) months.

2. Upon approval by the cabinet, the plan and schedule proposed by the applicant and [any] conditions imposed on the ap-

proval by the cabinet shall become conditions of the permit.

(2) Performance standards. Each permittee subject to a deferment shall, at a minimum:

(a) Complete final reclamation including backfilling, grading, topsoiling, and revegetation on all disturbed areas; except that those areas of the pit, work area, excess spoil disposal areas, topsoil storage areas, and access road necessary to allow resumption of coal extraction without redisturbance of finally reclaimed areas may be exempted from this requirement for the duration of the deferment. In order to meet this requirement, the permittee may be required to reclaim closer to the pit than the distance limits specified in the contemporaneous reclamation administrative regulation.~~;~~]

(b) Mulch or establish quick growing temporary vegetation, or both, on all areas exempted pursuant to~~[under]~~ paragraph (a) of this subsection (except for haul road surfaces), such as excess spoil disposal areas, work areas, topsoil storage areas, and all other areas that[which] have been cleared of vegetation, to the extent technically practicable to achieve erosion control or stability [as determined by the cabinet]. The permittee shall maintain the cover on all these areas to minimize erosion throughout the deferment period.~~;~~]

(c) Acid- or toxic-producing spoil shall not be left exposed but shall be covered or treated in accordance with Section 3 of 405 KAR 16:190 and 405 KAR 18:190.~~;~~]

(d) Supplemental sediment control measures such as straw dikes and fabric filter fences shall~~[may]~~ be required if necessary~~[by the cabinet on a case-by-case basis]~~ to minimize additional contributions of sediment to the stream flow or run-off.~~;~~ and~~;~~]

(e) if~~[Where]~~ accumulation of water in the pit may adversely impact the hydrologic balance, public health and safety or the environment, the cabinet shall require [such] measures [as are] necessary to minimize adverse impacts. These may include [but are not limited to such measures as]:

1. Providing drainage from the pit to prevent breaching of the undisturbed berm.~~;~~ or~~;~~]

2. Pumping the water to a treatment facility if~~[when]~~ accumulation of acid or toxic water in the pit may result in contamination of the ground water.

(3) Deferment implementation.

(a) The permittee shall implement the terms of the approved plan within the time schedule approved by the cabinet and consistent with this administrative regulation.

(b) Except as expressly modified by the approved plan, schedule, and conditions in the deferment approval, the permittee shall comply with all of the requirements of 405 KAR Chapters 7 through 24~~[the administrative regulations]~~ and the permit conditions that[which] would apply to the operation had the deferment not been granted. These requirements include [but are not limited to the following]:

1. All discharges of water from the permitted area shall be continually treated to meet the applicable effluent limitations.~~;~~]

2. All water quality monitoring and reporting otherwise required shall continue.~~;~~]

3. All diversion ditches, sedimentation ponds, haul road drainage ditches and culverts, [etc.,] shall be rehabilitated as necessary and continually maintained to comply with the applicable performance standards and with the designs approved in the permit. Sediment shall be removed from the sedimentation ponds if~~[when]~~ the design sediment storage volume has filled with sediment.~~;~~ and~~;~~]

4. Haul road maintenance, such as grading, replacement of durable surface material, and cleaning out of ditches and culverts, shall be continually performed as necessary to comply with the performance standards and the approved permit and to minimize erosion.

(4) Expiration and renewal.

(a) A deferment from coal removal and contemporaneous reclamation shall expire six (6) months after the date of issuance of the deferment by the cabinet.

1. A deferment from coal removal and contemporaneous reclamation may be renewed upon written application for a period of no more than six (6) months upon a showing of need for additional time, and upon a showing that the area subject to deferment is in

compliance with the requirements of 405 KAR Chapters 7 through 24~~[the administrative regulations]~~, the permit, and the terms of the deferment.

2. The cabinet shall inspect the area subject to deferment prior to approval of any renewal.

(b) Regardless of the reasons for the deferment, ~~[no]~~ deferments or subsequent renewals shall not be granted beyond the maximum aggregate period of thirty (30) months for ~~a~~any permit area, including ~~[any]~~ deferment periods issued for adverse conditions. At the expiration of the thirty (30) month aggregate period, a permittee shall not be granted ~~[any]~~ additional deferments or renewals unless the permittee can demonstrate that it has conducted twelve (12) months of continuous active coal removal from the permit area after the expiration of the thirty (30) month aggregate period, it has completed reclamation of all previously deferred areas in the permit area, and it otherwise meets all requirements for a deferment. ~~[For the purpose of this paragraph, "completed reclamation" means completion of reclamation phase I as defined by 405 KAR 10:040, Section 2(4)(a).]~~

(c) The deferment shall terminate upon resumption of coal extraction activities on the permit area subject to deferment.

(5) Enforcement and revocation.

(a) The cabinet shall inspect the area subject to deferment at least once each month on the average, during the routine partial and complete inspections made of the permit area. Upon each inspection, the inspector shall note under the "comments" section of the Mine Inspection Report form if [whether] the area subject to deferment meets the conditions of the deferment approval, including the plan and schedule.

(b) If the inspection shows that a violation of the conditions of the deferment or of 405 KAR Chapters 7 through 24~~[the administrative regulations]~~ or of the conditions of the permit is occurring on the area subject to deferment, or is causally related to the area subject to deferment, then the cabinet shall issue a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance in accordance with 405 KAR Chapter 12. If the permittee fails to abate the violation within the time for abatement, ~~or [any]~~ extension thereof, established by the cabinet, then the cabinet shall revoke the deferment in addition to other enforcement actions required by 405 KAR Chapters 7 through 24. ~~[Section 6. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved under Section 2 of this administrative regulation, the applicant shall submit to the cabinet supplemental assurance in the amount set forth in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required under 405 KAR Chapter 10.]~~

~~(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.~~

~~(b) However, the requirements of 405 KAR 10:030, 405 KAR 10:035, and 405 KAR 10:050 shall apply to supplemental assurance.~~

~~(2) Contour mining (single seam). The amount required shall be \$50,000 per 1500 feet, or any portion thereof, of additional distance approved for the first pit under Section 2 of this administrative regulation. If an additional pit or pits are approved, the amount shall be \$50,000 per 1500 feet, or any portion thereof, including the first 1500 feet of each additional pit.~~

~~(3) Contour mining (multiple seam). For multiple seam contour mining operations subject to Section 2(4) of this administrative regulation, the amount required shall be \$50,000 per 1500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation under Section 2 of this administrative regulation. If any additional multiple seam operations are approved, the amount shall be \$50,000 per 1500 feet, or any portion thereof, including the first 1500 feet of each additional multiple seam operation.~~

~~(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance set forth in subsection (2) of this section.~~

~~(5) Area mining. The amount required shall be \$50,000 for any~~

~~four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit under Section 2 of this administrative regulation. If an additional pit or pits are approved, the amount shall be \$50,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.~~

~~(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:~~

~~(a) Application to the cabinet for the return; and~~

~~(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).~~

~~(7) The provisions of this section and the requirements of Section 2 of this administrative regulation requiring approval for more than one (1) pit per permit area shall apply:~~

~~(a) Upon the effective date of this administrative regulation for all permit applications submitted on or after that date; and~~

~~(b) 180 days after the effective date of this administrative regulation for all other surface coal mining and reclamation operations.~~

~~Section 7. Documents Incorporated by Reference. (1) The following forms are hereby incorporated by reference:~~

~~(a) Supplemental Assurance, SME-42 (SA), July, 1994.~~

~~(b) Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA), July, 1994.~~

~~(c) These forms may be reviewed or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 14, 2012)**

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, [439.470,] 439.590 and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Western Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) "Western Kentucky Correctional Complex Policies and Procedures," August 14/June 15, 2012[April 14, 2008], are incorporated by reference. Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01 Public Information and Media Communication (Amended 6/15/12[11/14/06])

[WKCC 01-08-01 No Smoking: WKCC Facility (Amended 2/15/08)]

WKCC 02-01-01 Inmate Funds (Amended 6/15/12[10/14/05])

WKCC 02-01-02 Inmate Canteen (Amended 6/15/12[11/14/06])

WKCC 03-00-06 Confidentiality of Information by Consultants, Contract Personnel, and Volunteers (Amended 11/14/06)

WKCC 06-00-01 Offender Records and Information Access (Amended 8/14/12[6/15/12][11/14/06])

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WKCC 06-00-02	Administrative Process for Inmate Court Orders (Added 6/15/12)
WKCC 08-02-01	Fire Safety Plan (Amended 8/14/12[6/15/12][10/14/05])
WKCC 09-11-01	Tool Control (Amended 6/15/12[10/14/05])
WKCC 10-02-02	Special Management Unit (SMU) Operating Procedures, Living Conditions and Classification (Amended 8/14/12[6/15/12][Added 11/14/06])
WKCC 11-00-01	Food Service General Guidelines (Amended 6/15/12[4/14/08])
WKCC 11-02-00	Food Service Budgeting and Purchasing (Added 6/15/12)
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets (Amended 8/14/12[6/15/12][2/15/08])
WKCC 12-00-02	Housekeeping, Sanitation and Waste Removal (Amended 8/14/12[6/15/12][11/14/06])
WKCC 13-01-01	Use of Pharmaceutical Products (Amended 6/15/12[4/14/08])
WKCC 13-02-01	Health Care Services (Amended 6/15/12[10/14/05])
WKCC 13-02-02	Mental Health Services (Amended 8/14/12[Added 6/15/12])
WKCC 14-02-01	Inmate Clothing and Personal Hygiene Provisions (Amended 6/15/12[11/14/06])
WKCC 14-04-01	Legal Services Program (Amended 6/15/12[4/14/08])
WKCC 15-01-01	Hair and Grooming Standards (Amended 6/15/12[10/14/05])
WKCC 16-01-01	Visiting Policy and Procedures (Amended 8/14/12[6/15/12][2/15/08])
WKCC 16-02-01	Inmate Correspondence (Amended 6/15/12[2/15/08])
WKCC 16-03-01	Inmate Access to Telephones (Amended 10/14/05)
WKCC 16-04-01	Inmate Packages (Amended 8/14/12[6/15/12][4/14/08])
WKCC 17-01-01	Inmate Personal Property (Amended 8/14/12[6/15/12][10/14/05])
WKCC 17-02-01	Inmate Reception and Orientation (Amended 8/14/12[6/15/12][4/14/08])
WKCC 19-04-01	Assignment to and Safety Inspections [Inspection] of Inmate Work Program Areas (Amended 8/14/12[6/15/12][11/14/06])
WKCC 19-04-02	Farm Management and Production Guidelines (Added 6/15/12)
WKCC 20-01-01	Education Program (Amended 8/14/12[6/15/12][9/14/06])
WKCC 21-00-01	Library Services (Amended 8/14/12[6/15/12][11/14/06])
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities (Amended 8/14/12[6/15/12][10/13/05])
WKCC 22-00-02	Inmate Organizations (Amended 8/14/12[6/15/12][11/14/06])
WKCC 23-00-01	Religious Services (Amended 8/14/12[6/15/12][2/15/08])
WKCC 24-00-01	Social Services (Amended 8/14/12[6/15/12][11/14/06])
WKCC 25-02-01	Inmate Release Process (Amended 6/15/12[2/15/08])
WKCC 25-03-01	Prerelease Programs (Amended 6/15/12[11/14/06])
WKCC 26-01-01	Volunteer Services Program (Amended 6/15/12[9/14/06])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.
CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, August 14, 2012)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Bell County Forestry Camp.

Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," August 14[June 15], 2012[May 15, 2008], are incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-08-01	Public Information and News Media Access (Amended 5/15/08)
BCFC 02-01-01	Inmate Canteen (Amended 5/15/08)
BCFC 02-08-01	Prisoners' Fund (Amended 8/14/12[6/15/12][5/15/08])
BCFC 05-02-01	Consultants, Research, and Student Interns (Amended 5/15/08)
BCFC 06-01-01	Offender Records (Amended 8/14/12[6/15/12][10/15/01])
BCFC 06-02-01	Storage of Expunged Records (Amended 10/15/01)
BCFC 07-02-01	Preventative Maintenance Plan (Amended 6/15/12[Added 10/15/01])
BCFC 07-04-01	Smoking Control (Amended 6/15/12[5/15/08])
BCFC 07-05-01	Permit Required Confined Space (Amended 8/14/12[6/15/12][10/15/01])
BCFC 08-02-01	Fire Prevention (Amended 7/8/08)
BCFC 08-03-01	Fire Procedures (Amended 5/15/08)
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)
BCFC 09-05-01	Entry and Exit onto Institutional Grounds (Added 6/15/12)
BCFC 09-06-01	Search Policy and Disposition of Contraband (Amended 6/15/12[5/15/08])
BCFC 09-08-01	Drug Abuse Testing (Amended 5/15/08)
BCFC 09-08-02	Breathalyzer Testing (Added 10/15/01)
BCFC 09-09-01	Operation of Licensed Vehicles by Inmates (Amended 5/15/08)
BCFC 09-14-01	Bell County Forestry Camp Restricted Areas (Amended 8/14/12[6/15/12][5/15/08])
BCFC 09-27-01	Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)
BCFC 09-28-01	Canine Unit (Amended 8/14/12[Added 6/15/12])
BCFC 10-01-01	Temporary Segregation Holding Area (Amended 8/14/12[6/15/12][5/15/08])
BCFC 11-01-01	Food Services: General Guidelines (Amended 6/15/12[10/15/01])
BCFC 11-02-01	Food Service Security (Amended 6/15/12[10/15/01])
BCFC 11-03-01	Dining Room Guidelines (Amended 8/14/12[6/15/12][10/15/01])

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BCFC 11-04-01 Food Service: Meals (Amended 6/15/12[10/15/04])

BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/15/12[10/15/04])

BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 6/15/12[Added 10/15/04])

BCFC 11-05-02 Health Requirements of Food Handlers (Amended 8/14/12[6/15/12][10/15/04])

BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 6/15/12[10/15/04])

BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 8/14/12[6/15/12][10/15/04])

BCFC 12-01-01 Sanitation, Living Condition Standards, and Clothing Issues (Amended 5/15/08)

BCFC 12-01-02 Bed Areas and Bed Assignments (Amended 5/15/08)

BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)

BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)

BCFC 12-03-02 Barber Shop[shop] Services and Equipment Control (Amended 5/15/08)

BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/01)

BCFC 13-01-01 Medical Services (Amended 8/14/12[6/15/12][5/15/08])

BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 6/15/12[5/15/08])

BCFC 13-03-01 Dental Services (Amended 5/15/08)

BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/15/08)

BCFC 13-05-01 Emergency Medical Care (Amended 8/14/12[6/15/12][5/15/08])

BCFC 13-06-01 Consultations (Amended 5/15/08)

BCFC 13-07-01 Health Records (Amended 6/15/12[5/15/08])

BCFC 13-08-01 Vision and Optometry Services (Amended 7/8/08)

BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)

BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)

BCFC 13-11-01 Informed Consent (Amended 5/15/08)

BCFC 13-12-01 Mental Health Care (Amended 5/15/08)

BCFC 13-13-01 Special Health Care Programs (Amended 6/15/12[5/15/08])

BCFC 13-14-01 Use of Pharmaceutical Products (Amended 8/14/12[6/15/12][7/8/08])

BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 8/14/12[6/15/12][5/15/08])

BCFC 13-16-01 Elective Services (Amended 6/15/12[5/15/08])

BCFC 13-18-01 Serious and Infectious Diseases (Amended 5/15/08)

BCFC 13-19-01 Continuity of Health Care (Amended 5/15/08)

BCFC 13-20-01 Inmates Assigned to Health Services (Amended 5/15/08)

BCFC 13-21-01 Suicide Prevention and Intervention Program (Amended 5/15/08)

BCFC 13-24-01 Inmate Self-Administration of Medication (Amended 5/15/08)

BCFC 13-25-01 Syringes, Needles, and Sharps Control (Amended 5/15/08)

BCFC 13-26-01 Sexual Assault (Amended 5/15/08)

BCFC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/08)

~~BCFC 15-01-01 BCFC Adjustment Program (Amended 5/15/08)]~~

BCFC 16-01-01 Inmate Visiting (Amended 6/15/12[5/15/08])

BCFC 16-02-01 Telephone Communications (Amended

5/15/08)

BCFC 16-03-01 Inmate Mail Regulations (Amended 5/15/08)

BCFC 16-03-02 Inmate Packages (Amended 5/15/08)

BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)

BCFC 17-04-01 BCFC Inmate Property Control (Amended 7/8/08)

BCFC 17-05-01 Inmate Canteen (Amended 5/15/08)

BCFC 18-01-01 Institutional Classification Committee (Amended 5/15/08)

BCFC 18-02-01 Identification of Special Needs Inmates (Amended 6/15/12[5/15/08])

BCFC 19-01-01 Work Assignment (Amended 5/15/08)

BCFC 19-02-01 Governmental Services Program (Amended 5/15/08)

BCFC 20-01-01 Academic School (Amended 5/15/08)

BCFC 21-01-01 Library Services (Amended 5/15/08)

BCFC 22-01-01 Recreation and Inmate Activities (Amended 6/15/12[5/15/08])

BCFC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/08)

BCFC 23-01-01 Religious Services (Amended 5/15/08)

BCFC 24-01-01 Social Services and Counseling Program (Amended 5/15/08)

BCFC 24-01-02 Casework Services (Amended 5/15/08)

BCFC 25-01-01 BCFC Pre-release Program (Amended 5/15/08)

BCFC 25-02-01 Community Center Program (Amended 7/8/08)

BCFC 25-02-02 Inmate Furlough (Amended 5/15/08)

BCFC 25-04-01 Inmate Discharge Procedure (Amended 5/15/08)

BCFC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/08)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 15, 2012 at 10 a.m.

CONTACT PERSON: Amber Arnett, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (As Amended at ARRS, August 14, 2012)

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. **Parts 383, 1515, 1572[Part 1572, 49 C.F.R. Part 383]**

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS **Chapter 281A[281A.040]**. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining **or renewing[for the first time]** a hazardous materials endorsement for a commercial driver's license **[no later than January 31, 2005. On or after May 31, 2005, this requirement shall further apply to all persons seeking to renew a hazardous materials endorsement for a commercial driver's license]**. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and trans-

mit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.15(d)(1)[1572.3].

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4)[1572.3].

(5) "Fingerprint centers" means regional offices of Kentucky State Police's Division of Driver's Testing established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2)[1572.3].

(8) ["KDOT" means the Kentucky Department of Transportation]

(9)] "KSP" means the Kentucky State Police.

(9)(10) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.

(10)(11) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME [Submitted on or After January 31, 2005]. (1) An applicant applying for a hazardous materials endorsement [on or after January 31, 2005,] shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. In order to receive the security threat assessment, the applicant shall complete a "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, their DOT medical card, a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(5) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(6) If TSA informs the Commonwealth of a finding of Initial Determination of [Security] Threat Assessment, the applicant shall not be issued a HME. The applicant may[shall be entitled to] appeal the TSA's determination in accordance with[under the procedures set forth in] 49 C.F.R. 1515.5 or 1515.9[1572.141]. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with [procedures set forth in] 49 C.F.R. 1515.7[1572.143].

(7) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet[KDOT] shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME [Submitted On or After May 31, 2005]. (1) The Transportation Cabinet[KDOT] shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the[their] appointment proper identification, the applicant's[their] DOT medical card, a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet[commonwealth] may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(8) If TSA informs the Commonwealth of a finding of Initial Determination of [Security] Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may[is entitled to] appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9[1572.141]. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with [procedures set forth in] 49 C.F.R. 1515.7[1572.143].

(9) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet[KDOT] shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(10) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous endorsement shall[must] drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME [Submitted On or After May 31, 2005]. (1) In accordance with 49 C.F.R. [1572.13(e)[1572.13(g)], an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. KSP shall have[establish] eight (8) regional fingerprinting centers in the Commonwealth. These centers shall be located in the following cities:

(1) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(2) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(3) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(4) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(5) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(6) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(7) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(8) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240.

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application For a Hazardous Materials Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference~~[- is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: May 31, 2012 at 1 p.m.

CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at EAARS, August 14, 2012)

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts;[f] complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor;[f] and ensures accountability~~[establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts]~~. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. The procedures established in the Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs shall be followed for the inclusion of special populations in the state-required assessment and accountability programs.

Section 2. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", July~~June~~~~April~~ 2012~~[February 12, 2009]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 17th~~18th~~ Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TERRY HOLLIDAY, Ph.D., Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 14, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, or email at kevin.brown@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at EAARS, August 14, 2012)

703 KAR 5:225. School and district accountability, recognition, support, and consequences.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 7861

STATUTORY AUTHORITY: KRS 158.6453; 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts;[f] complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor;[f] and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the statewide system of accountability, recognition, support, and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7861.

Section 1. Definitions. (1) "Annual measurable objective" or AMO"~~[(AMO)]~~ means the improvement goal for each school or~~and~~ district calculated from the overall score~~[- student participation rate for the all students group and each subgroup, and graduation rate goal]~~.

(2) "Comprehensive District Improvement Plan" or CDIP"~~[(CDIP)]~~ means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(3) "Comprehensive School Improvement Plan" or CSIP"~~[(CSIP)]~~ means a plan developed by the school council or successor pursuant to KRS 160.346 with the input of parents, faculty, and staff, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4) "District of distinction" means a highest-performing district~~["Districts of Distinction" mean Highest-Performing districts] that:~~

(a) Meets its~~Meet their~~ current year AMO starting in 2012-2013, student participation rate, and graduation rate goal;

(b) Has~~Have~~ a graduation rate above sixty (60) percent for the prior two (2) years;

(c) Does~~Do~~ not have a school categorized as a focus school or priority school; and

(d) Scores~~Score~~ at the ninety-fifth (95th) percentile or higher on the Overall Score.

(5) "Focus district" means a district that has~~Districts mean districts that have~~ a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all districts~~and that have failed to meet the AMO for the last two (2) consecutive years]~~.

(6) "Focus school" means a school that has~~Schools~~

~~mean schools that have~~ a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap groups scores for all elementary, middle, and high schools ~~[that have failed to meet the AMO for the last two (2) consecutive years]~~; schools with an individual student ~~subgroup~~[performance group] within assessment grades by level with a score in the third (3rd) standard deviation below the state average for all students; or high schools that have a graduation rate that has been less than sixty (60) percent for two (2) consecutive years.

(7) "Graduation rate goal" means the annual graduation rate goal set by the department for each high school and district that measures progression toward the statewide goal of ninety-eight (98) percent by 2022 and is computed by dividing, by eleven (11), the difference between the 2011 baseline percent and ninety-eight (98) percent.

(8) "High-progress district" means a district["High-Progress Districts" mean districts] that:

(a) Meets its[Meet their] current year AMO starting in 2012-2013, student participation rate, and graduation rate goal;

(b) Has[Have] a graduation rate above sixty (60) percent for the prior two (2) years; and

(c) Has[Have] an improvement score indicating the ~~district~~ is[districts are] in the top ten (10) percent of improvement of all districts as determined by the difference in the two (2) most recent calculations of the overall score.

(9) "High-progress school[High-Progress—Schools]" means:

(a) A[mean] Title I school[schools] that:

1. Meets its[Meet their] current year AMO starting in 2012-2013, student participation rate, and graduation rate goal;

2. Has[Have] a graduation rate above sixty (60) percent for the prior two (2) years; and

3. Has[Have] an improvement score indicating the ~~school~~ is[schools are] in the top ten (10) percent of improvement of all Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score; or[and]

(b) A Non-Title I school[schools] that:

1. Meets its[Meet their] current year AMO starting in 2012-2013 student participation rate, and graduation rate goal;

2. Has[Have] a graduation rate above sixty (60) percent for the prior two (2) years; and

3. Has[Have] an improvement score indicating the ~~school~~ is[schools are] in the top ten (10) percent of improvement of all non-Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score.

(10) "Highest-performing district" means a district[Highest-Performing Districts" mean districts] that:

(a) Meets its[Meet their] current year AMO starting in 2012-2013;[;] student participation rate, and graduation rate goal;

(b) Has[Have] a graduation rate above sixty (60) percent for the prior two years; and

(c) Scores[Score] at the ninetieth (90th) percentile or higher on the overall score except that a ~~district~~[districts] shall not qualify as highest-performing if any ~~school~~[schools] in the district ~~is~~ categorized as a focus-school or priority school[are categorized as Focus Schools or Priority Schools].

(11) "Highest-performing school" means an["Highest-Performing Schools" mean] elementary, middle, or high school ~~level~~[levels] that:

(a) Meets its[Meet their] current year AMO starting in 2012-2013;[;] student participation rate, and graduation rate goal;

(b) Has[Have] a graduation rate above sixty (60) percent for the prior two years; and

(c) Scores[Score] at the ninetieth (90th) percentile or higher on the overall score.

(12) "Mean" means the sum of the values divided by the number of values.

(13) "Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs[Next-Generation Instructional Programs and Supports" is defined by 703 KAR 5:200].

(14) "Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data[Next-Generation Learners" is defined by 703 KAR 5:200].

(15) "Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data[Next-Generation Professionals" is defined by 703 KAR 5:200].

(16) "Next-generation schools and districts" means a component of the state-wide accountability system that reports performance data for schools and districts[Next-Generation Schools and Districts" is defined by 703 KAR 5:200].

(17) "Non-duplicated student gap group score" means an aggregate, non-duplicated count of achievement scores of student groups that include African/American, Hispanic, American Indian, Limited English proficiency, students in poverty based on qualification for free and reduced price lunch, and students with disabilities who have an Individualized Education Program (IEP).

(18) "Overall score" means the score resulting from a compilation of ~~the~~ accountability components listed in Section 2 of this administrative regulation that determines placement of a school or district in a classification for recognition, support, or consequences.

(19) "Participation rate" means the percent of all students and the student subgroups in the school or district that participate in annual statewide assessments[and the percent of all groups of students in the school or district that participate in annual statewide assessments], with a goal of ninety-five (95) percent [or higher for the total population and for all groups of students].

(20) "Percentile" means the value of a variable below which a certain percent of numbers fall.

(21) "Priority ~~district~~" means a district that has[Districts" mean districts that have] an overall score in the bottom five (5) percent of overall scores for all districts that have failed to meet the AMO for the last three (3) consecutive years.

(22) "Priority ~~school~~" means a school that has[Schools" mean schools that have] been identified as a ~~["]persistently low-achieving or PLA[" (PLA)]~~ school as defined by KRS 160.346.

(23) "Progressing" means a designation attached to a school or district's classification as proficient, distinguished, or needs improvement to indicate that the school has met its AMO, student participation rate for the all students group and each subgroup, and has met its graduation rate goal.

(24) "School level" means the standard configuration of grade levels that form elementary, middle, and high schools as established[defined] in 703 KAR 5:240, Section 5.

(25) "School[Schools] of Distinction" means a[mean] high-est-performing elementary, middle, or high school[schools] that:

(a) Meets its[Meet their] current year AMO starting in 2012-2013;[;] student participation rate, and graduation rate goal;

(b) Has[Have] a graduation rate above sixty (60) percent for the prior two (2) years; and

(c) Scores[Score] at the ninety-fifth (95th) percentile or higher on the overall score.

(26) "Standard deviation" means a measure of the dispersion of a set of data from its average.

(27) "Student subgroup" means a student group that includes[student groups that include] African-American, American Indian, Asian, White, Hispanic, English language learners, students in poverty on qualification for free or[and] reduced price lunch, or students with disabilities who have an Individualized Education Program (IEP).

Section 2. Statewide System of Accountability, Recognition, Support, and Consequences. (1) The accountability system established by 703 KAR chapter 5 shall be called Unbridled Learning: College and Career Ready for All.

(2) An overall score shall be used to classify schools and districts for recognition, support, and consequences. The overall score shall be a compilation of the following accountability components:

(a) Next-Generation Learners, as established in 703 KAR 5:200;

(b) Next-Generation Instructional Programs and Support, as established in 703 KAR 5:230; and

(c) Next-Generation Professionals, as established in an administrative regulation that will be promulgated[following the promulgation of an administrative regulation] by the Kentucky Board of Education to establish the requirements for Next-Generation Professionals.

Section 3. Weighting of Components Comprising the Overall Score. (1) The timeline and weighting of each component as a percentage of the overall score shall occur as follows:

Year	Component	Percentage of Overall Score
2011-2012	Next-Generation Learners	100 percent
2012-2013 <u>and</u> <u>2013-2014</u>	Next-Generation Learners	Seventy-seven (77) percent
	Next-Generation Instructional Programs and Support	Twenty-three (23) percent
2014-2015 <u>and</u> <u>subsequent</u> <u>years</u>	Next-Generation Learners	Seventy (70) percent
	Next-Generation Instruction Programs and Support	Twenty (20) percent
	Next-Generation Professionals	Ten (10) percent

(2) If data cannot be calculated for any component, the weights shall be distributed equally to the other components that shall be reported for the school or district.

Section 4. Classifications, Annual Measurable Objectives, and Goals. (1) A school level or district[school levels and districts] shall be classified based on the overall score in accordance with the requirements established in this subsection.[in the following manner:]

(a) By level of elementary, middle, or[and] high, a distribution of scores from the overall score shall be computed in order to determine the percentiles associated with each overall score;

(b) The overall score associated with specific percentiles shall classify a school level or district[school levels and districts] as follows:

Percentile based on Overall Score	School <u>or[and]</u> District Classification
At or above ninety (90)	Distinguished
At or above seventy (70)	Proficient
Below seventy (70)	Needs Improvement

(c) The overall score used to classify a school or district as distinguished, proficient, or needs improvement shall be recalculated as the components of the accountability system listed in Section 2[3] of this administrative regulation are added. When all components have been added, the overall score used to classify a school or district as distinguished, proficient, or needs improvement shall remain constant for a period of five (5) years before calculation of the overall score shall be re-established[the process shall be repeated]. Upon inclusion of all three (3) components to the Overall Score, the mean, standard deviation, and the AMO shall remain constant for a period of five (5) years before the process shall be repeated. Prior to the inclusion of all three (3) components, the mean, standard deviation, and the AMO shall be calculated when a new component is added.]

(2) The mean and standard deviation shall be recalculated and the AMO for each school or[and] district shall be reset as the components of the overall score are added. When all three (3) components of the overall score have been included, the AMO for each school and district shall be set for a five (5) year period before the mean and standard deviation are re-established[recalculated].

(3) Each school level or district[school levels and districts] shall receive an AMO. The method for determining the AMO shall be as follows:

(a) Using the overall score, a mean and standard deviation shall be computed for the elementary, middle, and high school levels; and

(b) The mean and standard deviation shall be recalculated as the components of the accountability system are added and shall follow the timeline established[described] in Section 3 of this administrative regulation.

(4)(a) The AMO goal for a school level or district classified as needs improvement shall be to increase the overall score by .07 of a standard deviation annually.

(b) The AMO goal for a school level or district classified as proficient or distinguished shall be to increase the overall score by .035 of a standard deviation annually.[(3)] [The AMO goal for school levels and districts classified as Needs Improvement shall be to increase the Overall Score by seven-tenths (.07) of a standard deviation annually, and the AMO goal for school levels and districts classified as Proficient or Distinguished shall be to increase the Overall Score by .035 of a standard deviation annually.]

(5)[(4)] Each school level or district classified as distinguished, proficient, or needs improvement that meets its AMO goal, student participation rate, and graduation rate goal shall be further classified as progressing.

(6)[(5)] For a school level[school levels] with a changed school service area as established[defined] in 703 KAR 5:240, Section 6, the AMO shall be recalculated based on current students. A school or district may submit a plan to recalculate the AMO as established in this subsection.[follows:]

(a) A school or a district may request that individual students be tracked across schools or that the district AMO be used for the school.[f:]

(b) The Department shall approve the plan and shall assure accurate calculations and the inclusion of all students.[f:]

(c) Upon approval, the plan shall be implemented and remain in effect until an additional change in school service area occurs.[f:]

(d) The granting of a request for a different method to recalculate an AMO shall include a requirement that each affected school and district waive in writing its right to make the request the basis of a subsequent appeal of a school's classification.[f; and]

(e) The intent to submit a plan to recalculate the AMO shall be received by the department by June 30 of the year prior to which the AMO recalculation shall occur.

(7)[(6)] A focus school[Focus Schools] identified using the non-duplicated student gap group score method shall be determined in accordance with the requirements established in this subsection.[in the following manner:]

(a) The nonduplicated student gap group shall be ranked for all schools in the state.

(b) The schools in the lowest ten (10) percent of the non-duplicated student gap group scores by level shall be called focus schools.

(c) Additional Title I schools shall be added to the list as needed to ensure that the list includes at least ten (10) percent of the Title I schools.[number of Focus Schools shall be ten (10) percent of the total number of schools by level;

(b) The total number of Focus Schools shall be comprised of Title I schools and non-Title I schools, and shall include at least ten (10) percent of all Title I schools;

(c) After determining the Title I schools on the list, the remaining number of slots on the list shall be filled by non-Title I schools until the number of both Title I and non-Title I schools equals the total number of schools specified in paragraph (a) of this subsection; and]

(d) Non-duplicated student gap groups by school shall have at least ten (10) students in order for the calculation to occur.

(8)[(7)] A focus school[Focus Schools] identified using the third (3rd) standard deviation method shall be determined as established in this subsection.[in the following manner:]

(a) By level of elementary, middle, or[and] high, the state average of proficient and distinguished students in each subject area of reading, mathematics, science, social studies, and writing shall

be computed, and a standard deviation by subject area for all students shall be computed.~~;~~

(b) Student subgroups shall number at least twenty-five (25) students in order for the calculation to occur.~~;~~ and

(c) A school having an individual student subgroup by level and subject ~~that falls~~~~[falling]~~ below the third (3rd) standard deviation cut score shall ~~be identified~~~~[identify the school]~~~~[cause the school to be identified]~~ as a focus school.

Section 5. Recognition. (1) Recognition categories shall include Schools or Districts of Distinction, Highest-Performing Schools or Districts, and High-Progress Schools or Districts. Schools and districts in these categories shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying the category of recognition and the rewards for which they are eligible.

(2)(a) Each recognized school or district shall be authorized to use a department-approved web logo and other promotional materials as may be designated by the department reflecting the category of recognition earned.

(b) Subject to availability of funds, financial rewards may be used in conjunction with other recognition activities, and may include funding for special professional growth opportunities or support to enable recognized schools or districts to partner with and mentor a lower-performing school or district.

(c) Highest-performing and high-progress schools and districts shall receive special recognition as determined by the Commissioner of Education.

(3) A school or district~~[Schools and districts]~~ identified for recognition shall continue to meet eligibility criteria in order to retain ~~its~~~~[their]~~ designation and receive recognition for that category.

(4) A school or district~~[Schools and districts]~~ identified as a priority school or district or a focus school or district~~[Priority Schools or Districts or Focus Schools or Districts]~~ shall not be eligible for recognition as a highest-performing school or district or a school or district of distinction~~[Highest-Performing Schools or Districts or Schools or Districts of Distinction]~~, but may receive recognition as a high-progress school or district, if it meets the definition established~~[High-Progress Schools or Districts, if they meet the definitions set forth]~~ in Section 1 of this administrative regulation and the requirements of this section.

(5) In order to qualify for recognition beginning in 2012-2013, a school or district~~[schools and districts]~~ shall meet the AMO goal~~;~~ graduation rate goal, and student participation rate~~[goals]~~ and each high school's graduation rate shall be above sixty (60) percent~~[in order to qualify for recognition]~~.

Section 6. Supports and Consequences. (1) Supports and consequences categories shall include Priority Schools and Districts and Focus Schools and Districts.

(2) A priority school or district~~[Priority Schools and Districts]~~ shall undergo the education recovery processes established~~[outlined by]~~ KRS 160.346 and 703 KAR 5:180, in addition to the requirements and consequences established~~[outlined]~~ in this administrative regulation.

(3) A focus school or district~~[Focus Schools and Districts]~~ shall be required to revise its CSIP or CDIP~~[their CSIPs or CDIPs]~~ consistent with the requirements of this section and Section 9 of this administrative regulation.

(4) A school or district that is identified as a priority or focus school or district shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying its category and the required supports and consequences that shall apply.

(5) A school or district that is identified as a priority or focus school or district for the first time shall revise its~~[the]~~ CSIP or CDIP within ninety (90) days of receiving the notice from the Commissioner of Education.~~[(6) A school that is identified in one (1) of these categories shall revise and submit its plan for collaboration and approval by the superintendent of the district within ninety (90) days of receiving notice from the Commissioner of Education.]~~

Section 7. Continuing Consequences for Schools and Districts

that Remain in Priority or~~[and]~~ Focus Status for More Than One (1) Year. (1) To exit the priority status, the school or district shall:

(a) Meet AMO~~[AMO/AYP]~~ goals for three (3) consecutive years;

(b) and shall No longer be identified by the applicable percent calculation of being in the lowest five (5) percent; and

(c) Score at or above a seventy (70) percent graduation rate for three (3) consecutive years.

(2) To exit the focus status, the requirements of this subsection shall be met.

(a) A focus school~~[Focus Schools]~~ in the nonduplicated student gap group category shall:

1. Be above the lowest ten (10) percent category;

2. Show improvement; and

3. Meet AMO for two (2) years in a row.

(b) A focus school~~[Focus Schools]~~ in the third standard deviation category shall have the individual subgroup that triggered the school's placement in the category to:

1. Rise above the third standard deviation cut score;

2. Show improvement; and

3. Meet AMO for two (2) years in a row.

(c) A focus school~~[Focus Schools]~~ in the category due to graduation rate shall:

1. Have a graduation rate higher than seventy (70) percent;

and

2. Meet AMO for two (2) years in a row.

(d) A focus district~~[Focus Districts]~~ in the non-duplicated student gap group category shall be above the lowest ten (10) percent category.

(3)(a) A school or district that is identified as a priority school or district for two (2) or more consecutive times, or a school or district that remains in the focus school or district category ~~[and does not meet the AMO]~~ for three (3) consecutive years ~~[compilations of the Overall Score]~~, shall revise its~~[the]~~ CSIP or CDIP as specified in Section 9 of this administrative regulation ~~[for submission to the Department for approval]~~ within ninety (90) days of receiving notice from the Commissioner of Education.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP.

(c) The CSIP or CDIP~~[CSIPs and CDIPs]~~ shall be posted to the appropriate school or district Web site.~~[The CSIP shall be submitted for collaboration with and approval by the superintendent of the district prior to submission to the Department. Upon approval by the Department, the plan shall be posted to the school or district website.]~~

(4)(a)(2) In addition to the requirements of this section, a priority school or district that is~~[Priority Schools or Districts that are]~~ identified for three (3) or more consecutive times, or a focus school or district that is~~[Focus Schools or Districts that are]~~ identified~~[do not meet the AMO]~~ for four (4) or more consecutive years~~[compilations of the Overall Score]~~ shall revise its~~[the]~~ CSIP or CDIP as specified in Section 9 of this administrative regulation.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP, which shall then be electronically transmitted to KDE within ninety (90) days of receiving notice from the Commissioner of Education.

(c) The CSIP or CDIP shall be posted to the appropriate~~[on the]~~ school or district Web site.

(d) The school or district shall~~[They shall also]~~ engage in the following actions:

1. (a) Participate in a set of improvement strategies outlined by an accreditation process;

2. (b) If directed by the department, receive the assignment of a high-achieving partner school or district of similar demographics for mentor activities as directed by the department; and

3. (c) Accept ongoing assistance and resources throughout the year as assigned or approved by the department.

Section 8. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation.

(2) The department shall monitor implementation of each CDIP

or CSIP[CDIPs and CSIPs] and shall provide guidance based upon information gathered from the following:

- (a) Progress reports from the school through the district;
- (b) Data reviews;
- (c) On-site observation; and
- (d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the Department, each school ~~district[districts]~~ shall monitor compliance of individual schools within the district.

Section 9. Comprehensive School and District Improvement Plan Process. (1) Each school or district~~All schools and districts~~ shall annually develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or~~school and~~ district comprehensive improvement plan~~plans~~ shall include:

- (a) Executive summary that shall include a vision and a mission;
- (b) Needs assessment that shall include:
 1. A description of the data reviewed and the process used to develop the needs assessment;
 2. A review of the previous plan and its implementation to inform development of the new plan; and
 3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;
- (c) Process for development that shall include:
 1. Analysis of data to determine causes and contributing factors;
 2. Prioritization of needs; and
 3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis, that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;
- (d) A set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and administrative regulations included in those assurances; and

(e) A process for annual review and revision by the school or district.

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

- (a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;
- (b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;
- (c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.

(5) A CSIP[CSIPs] shall also include the elements required of schools by KRS 158.649(5).

(6) A CSIP or CDIP for a priority or focus school or district~~CSIPs and CDIPs for Priority and Focus Schools and Districts~~ shall also address the following:

(a) Curriculum alignment for schools within the district and within each individual school~~school(s)~~, ensuring the instructional program is;

1. Research-based;

2. Rigorous;

3. [research-based, is rigorous, is] Aligned with the Kentucky Core Academic Standards as established~~described~~ in 704 KAR

3:303; and

4. [and is] Based on student needs~~[if a Priority District, Priority School, Focus District, or Focus School]~~;

(b) Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work, if a priority or focus school;

(c) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness, or graduation rate~~[if a Priority District, Priority School, Focus District, or Focus School]~~;

(d) Activities to target demonstrators of weakness in program reviews~~[if a Priority District, Priority School, Focus District, or Focus School]~~;

(e) Activities to target areas of need identified in teacher and leader effectiveness measures~~[if a Priority District, Priority School, Focus District, or Focus School]~~;

(f) School safety, discipline strategies, and other non-academic factors that impact student achievement, such as students' social, emotional, and health needs, if a priority or focus school;

(g) Design of the school day, week, or year to include additional time for student learning and teacher collaboration, if a priority or focus school;

(h) Specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group, if a focus school or district; and

(i) Short-term, monthly plans for the first ninety (90) days of implementation, and the establishment of teacher turnaround teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of its plan, if a priority school.

(7) A priority or focus district~~Priority and Focus Districts~~ shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CDIP. A district containing a priority or focus school~~Districts containing Priority and Focus Schools~~ shall assist those schools in using these data to inform the needs assessment required by the CSIP.

(8) The Commissioner's Raising Achievement and Closing Gaps Council and the Commissioner's Parents Advisory Council shall provide guidance to focus schools and districts as they conduct their needs assessments and revise their CSIPs and CDIPs.

(9) A priority school~~Priority Schools~~ shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.

(10) The CDIP for a district with a priority or focus school ~~shall include the support to be provided to the priority or focus school by the district. The priority or focus school's CSIP[CDIPs for districts with Priority and Focus Schools shall include the support to be provided to Priority and Focus Schools by the district. The Priority and Focus Schools' CSIPs]~~ shall include the support that will be provided by the district to the school~~schools~~.

(11) The CDIP for each district shall be posted to the district's Web site. The CSIP for each school shall be posted to the school's Web site.~~The CDIP for both Priority and Focus Districts shall be posted to the district website and] upon collaboration with and approval by the superintendent of the district,][the CSIPs for both Priority and Focus Schools shall be posted to the appropriate school website.][Section 10. Exit Criteria for Priority and Focus Schools and Districts. (1) In order to exit Priority School or District status, a school or district shall meet the AMO goals for three (3) consecutive years, shall no longer be identified by the applicable percent calculation, and shall score at or above a seventy (70) percent graduation rate for three (3) consecutive years.~~

(2) ~~In order to exit Focus School or District status, a school or district shall meet the AMO goal for two (2) consecutive years, shall no longer be identified by the applicable percent calculation, and the subgroup causing the identification shall show improvement. If a school's identification is due to graduation rate, in order to exit, the school shall have a grad-~~

~~uation rate higher than seventy (70) percent and meet the AMO goals for two (2) consecutive years.]~~

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

TERRY HOLLIDAY, Ph.D.

DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 14, 2012

FILED WITH LRC: June 14, 2012 at 2 p.m.

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, or email at kevin.brown@education.ky.gov.

**Public Protection Cabinet
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, August 14, 2012)**

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130[~~EO-2008-507~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List".

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Department" means Department of Housing, Buildings, and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601-5405.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the department and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032;

(2)(a) Flushmate water closet tank;~~§~~

(b) Microphor company. Two (2) quart flush toilets;~~§~~

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush;~~§~~

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems;~~§~~

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock;~~§~~

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products;~~§~~

(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle;~~§~~

(3) Tubular traps with gasket in trap seal;

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover;

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage;~~§~~

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage;~~§~~

(d) Little Giant Pump Company, Drainsaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain;~~§~~

(e) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates;~~§~~

(f) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use;~~§~~

(g) Electric Drain System as manufactured by Myers for light commercial and household usage;~~§~~

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves;

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket;~~§~~

(c) Dekitite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation;~~§~~

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only;~~[f:]~~

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation;~~[f:]~~

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc;~~[f:]~~

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company;~~[f:]~~

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc;~~[f:]~~

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe;

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc;~~[f:]~~

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be:

(a) Backfilled by hand and tamped six (6) inches around piping;

(b) Surrounded by six (6) inches of sand grillage;

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc;

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation;

(10)(a) Water heaters. Heat pump water heaters as manufactured by:

1. Dec International, Inc., Therma-Stor Products Group; or

2. Steibel Eltron Accelera 300. If the water heater is~~[these water heaters are]~~ shipped with a 100 PSI Pressure and Temperature Relief Valve, if~~[they]~~ shall be replaced with a 150 PSI Pressure and Temperature Relief Valve;~~[f:]~~

(b) Water heaters, point of use or instantaneous;~~[f:]~~

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154;~~[f:]~~

2. Eemax Electric Tankless water heaters;~~[f:]~~

a. [(a)] Nonpressure type without the requirement of a temperature and pressure relief valve; or

b. [(b)] The pressure type with the requirements that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and be installed with the product;~~[f:]~~

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge;~~[f:]~~

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP;~~[f:]~~

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which shall be equipped with an approved temperature and pressure relief valve;~~[f:]~~

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve;~~[f:]~~

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve;~~[f:]~~

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve;~~[f:]~~

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet;~~[f:]~~

10. Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve;~~[f:]~~

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve;~~[f:]~~

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc;~~[f:]~~

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which shall be equipped with an approved temperature and pressure relief valve;~~[f:]~~

14. Ariston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved temperature and pressure relief valve;~~[f:]~~

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens;~~[f:]~~

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters;~~[f:]~~

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480;~~[f:]~~

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers;~~[f:]~~

20. Stiebel Eltron Tankless Water Heater;~~[f:]~~

a. [(a)] Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks;

b. Models Tempra/DHC-E 8/10 and DHC-E 12;

c. Models Mini 2, Mini 3, Mini 4, and Mini 6 Point of Use tankless electric water heaters; and

d. Models 12/2 Plus, 15/15 Plus, 20/20 Plus, 24/24 Plus, 29 Plus, and 36 Plus;~~[f:]~~

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with temperature and pressure relief valves;~~[f:]~~

22. Controlled Energy Corporations "Powerstream" tankless water heater;~~[f:]~~

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models;~~[f:]~~

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves;~~[f:]~~

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve;~~[f:]~~

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve;~~[f:]~~

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve;~~[f:]~~

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve;~~[f:]~~

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve;~~[f:]~~

31. Quieside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees;~~[f:]~~

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve;~~[f:]~~

(11) Compression joints. Fail-safe hot and cold water systems;.

(12) Orion fittings for acid waste piping systems for above and below ground;

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping;

(14) Johns Manville Flex I drain roof drain system;

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick;

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping;

(17) Elkay Aqua-chill water dispensers.;

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum;

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only;

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.;

(20) Interceptors:

(a) Town and Country plastic interceptors to be used as a grease trap.;

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.;

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.;

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.;

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.;

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.;

(g) Schier Grease Interceptors Trapper II Series meeting ASME 112.14.3 Model numbers 1820, 2025, 2635 and 3050.;

(h) Schier Grease Interceptors Great Basin Series meeting ASME 112.14.3 Model numbers GB-75 and GB-250 approved only with the installation of two-directional, accessible cleanouts on the inlet and the outlet. The discharge of garbage disposals shall not be permitted.;

(21) Plastic Oddities Srv (sewer relief vent) clean-out;

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture;

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.;

(24) Eljer plumbing ware - Elgers ultra one/G water closet;

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber;

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.;

(26) Exemplar Energy garden solar water heater;

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials;

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries;

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.;

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.;

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval;

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35;

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans;

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.;

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers;

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade;

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.;

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials;

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes;

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes;

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building;

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer;

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line;

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations;

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.;

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion;

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.;

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC;

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems;

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint.;

(a) The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements.;

(b) This system shall be approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only;

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes.;

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(a) A video camera tape of the existing sewer shall be made to determine proper alignment and reviewed by the plumbing inspector. ~~[-]~~

(b) After the installation is complete, another tape shall be ~~reviewed~~~~[reviewed]~~ by the plumbing inspector to ensure that the installation was successful. ~~[-]~~

(c) The sewer shall be tested according to 815 KAR 20:150. ~~[-]~~

(d) The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction;

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only;

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal;

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor;

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.;

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange;

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIP1 301-00;

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions;

(a) A plumbing construction permit shall be required;

(b) Installation shall be by a licensed plumber;

(c) Water quality shall be tested before and after each project; and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM". ~~[-]~~

(53) Base Products Corporation;

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only;

2. Be approved for groundwater removal only; and

3. Require incoming water pressure of 50 psi to operate. ~~[-]~~

(b) Battery back-up pump: hydropump. ~~[-]~~

(54) Perma-Liner Industries, Inc. Lateral Lining System.:

(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations. ~~[-]~~

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3). ~~[-]~~

(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6). ~~[-]~~

(d) A permit shall be obtained prior to an exterior or interior application. ~~[-]~~

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only;

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer;

(57) MaxLiner. ~~[-]~~

(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations. ~~[-]~~

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3). ~~[-]~~

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6). ~~[-]~~

(d) Permits shall be required for both interior and exterior applications. ~~[-]~~

(58) Nuflow Technologies Inc., Nuflow System;

(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations. ~~[-]~~

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3). ~~[-]~~

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6). ~~[-]~~

(d) Permits shall be required for both interior and exterior applications. ~~[-]~~

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations;

(60) ~~WATCO~~~~[WATAGO]~~ Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow;

(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 cleanout tee; and

(62) Pipe Patch NO-Dig Repair System by Source One Environmental. ~~[-]~~

(a) The repair shall require a plumbing installation permit issued by the Department. ~~[-; and]~~

(b) After the repair has been completed, the building sewer shall be inspected, tested with either a water or a smoke test, and approved by the Department.

AMBROSE WILSON IV, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 8 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365 ext. 144, fax (502) 573-1057.

PUBLIC PROTECTION CABINET

**Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, August 14, 2012)**

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS Chapter 13B, 164.772(3), 227A.010, 227A.060, 227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040 and 227A.060 authorize the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

(1) Complete an application as required by Section 2 of this administrative regulation;

(2) Pay the application fee required by Section 3 of this administrative regulation;

(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and

(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) The applicant shall complete an application form, either Electrical Contractor's License Application, Form BCE-EL-2, or Electrical License Application Form, BCE-EL-3, which shall include the following information:

(a) The applicant's name;

- (b) The applicant's home address;
- (c) The applicant's business address;
- (d) The applicant's home and business telephone numbers;
- (e) The applicant's date of birth;
- (f) The **last six (6) digits of the** applicant's Social Security number or **complete** employer identification number;
- (g) The applicant's email address;
- (h) The licenses applied for;
- (i) For master electrician or electrician, a narrative listing of the applicant's experience in the electrical industry, including:
 - 1. Business name and address;
 - 2. Job title; and
 - 3. Supervisor's name;
- (j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;
- (k) A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);
- (l) A passport-sized color photograph of the applicant;
- (m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and
- (n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage.

(2) An applicant shall provide a verified criminal background check, conducted by the Department of Kentucky State Police within sixty (60) days of application. The cost of the background check shall be paid by the applicant.

(3) An applicant for reciprocity shall:

- (a) Comply with the requirements set forth in the reciprocity agreement between Kentucky and the state in which the applicant is licensed; and
- (b) Submit a completed Reciprocity Electrical License Application, Form BCE-EL-4, which shall include:
 - 1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);
 - 2. A passport-sized color photograph of the applicant;
 - 3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and
 - 4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

- (a) \$200 for an electrical contractor's license;
- (b) \$100 for a master electrician's license; or
- (c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:

(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;

(b) A copy of a business license issued by a county or municipal government that did not issue electrical contractors, master

electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician for at least one (1) of the following:

- 1. An electrical workers union;
- 2. A certified electrical inspector; or
- 3. An employer that employed the applicant as an electrician or a master electrician; or

(d) 1. Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work.

2. Experience gained while in the military shall be deemed to have been earned in Kentucky.

(3) One (1) year of electrical experience shall consist minimally of 1,600 hours of electrical work in a contiguous twelve (12) month period.

Section 5. Examinations. (1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. A passing score shall be valid for a period of three (3) years.

(2) For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

- (a) An owner of the applicant;
- (b) An officer of the applicant;
- (c) A director of the applicant; or
- (d) A full-time employee of the applicant.

(3)(a) If a person designated by an entity as provided in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

- 1. Has passed the examination; or
- 2. Successfully passes the examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) An applicant denied a license may appeal the decision to the Commissioner of the Department of Housing, Buildings and Construction. The applicant shall submit written notice of the appeal to the Department of Housing, Buildings, and Construction within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Commissioner of the Department of Housing, Buildings, and Construction.

Section 7. Proof of Insurance. (1) An applicant for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming the Department of Housing, Buildings, and Construction, Electrical Licensing, as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an approved insurance provider with the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Department of

Housing, Buildings, and Construction if:

- (a) A policy is cancelled, terminated, or not renewed; or
- (b) The policy limits are lowered.
- (4) Electrical contractors shall advise the Department of Housing, Buildings, and Construction of a:
 - (a) Change in their insurance coverage, including cancellation or termination of any policy;
 - (b) Change in the insurer providing the coverage; or
 - (c) Changed circumstances that require the contractor to obtain coverage.

Section 8. Renewal Requirements. (1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) The Department of Housing, Buildings, and Construction shall issue an initial license to an applicant for a period of up to twenty-three (23) months and shall charge a pro rata initial license fee to reflect the actual term of the initial license. An initial license shall not be issued for less than a twelve (12) month period.

(3) A licensee shall apply for license renewal on Electrical License Renewal Application, Form BCE-EL-5.

(4) A licensee shall provide a verified criminal background check, conducted by the Department of Kentucky State Police within sixty (60) days of renewal application. The cost of the background check shall be paid by the licensee.

Section 9. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

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

(a) Form BCE-EL-2, "Electrical Contractor's License Application", **revised August, 2012[March, 2007 edition]**;

(b) Form BCE-EL-3, "Electrical License Application", **revised August, 2012[May 2011 edition]**;

(c) Form BCE-EL-4, "Reciprocity Electrical License Application," August 2009 edition; and

(d) Form BCE-EL-5, "Electrical License Renewal Application", **revised August, 2012[August 2009 edition]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 8 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, August 14, 2012)**

910 KAR 1:190. Nutrition program for older persons.

RELATES TO: KRS 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 42 U.S.C. 3018, 3025, 3030a to 3030g-22

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e authorizes grants to states under approved state plans to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet as the state agency to administer the Older Americans Act in Kentucky and authorizes the cabinet to promulgate administrative regulations necessary to comply with any requirement imposed or required by federal law. This administrative regulation sets forth the standards of operation for the nutrition program for older persons.

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means an entity designated by the state to administer, at the local level, the programs funded by the department[Older Americans Act of 1965, as amended].

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services within the planning and service area.

(3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service.

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Community" means a county designated as urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(6) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.

(7)[(6)] "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

- (a) Nutrition education;
- (b) Nutrition assessment;
- (c) Nutrition counseling;
- (d) Nutrition screening;

(e) Opportunities for social engagement at senior centers or on field trips; and

(f) Volunteer roles that contribute to overall health and well-being.

(8)[(7)] "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(9)[(8)] "Department" means the Department for Aging and Independent Living.

(10)[(9)] "Dietary reference intakes" means the nutritional requirements:

(a) Established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; and

(b) Included in DAIL-NP-17.9.8, Meal Planning Nutrient Requirements.

(11)[(40)] "District" is defined by KRS 205.455(4).

(12)[(44)] "District nutrition program" means the program approved by the department and administered in each of the fifteen (15) planning and service areas in Kentucky by the districts or other contract agencies.

(13)[(42)] "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

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~~(14)~~~~(13)~~ "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound that include:

- (a) Nutrition screening;
- (b) Nutrition education;
- (c) Nutrition assessment; and
- (d) Nutrition counseling.

~~(15)~~~~(14)~~ "Licensed dietitian" is defined by KRS 310.005(11).

~~(16)~~~~(15)~~ "Meal" means a portion of food that:

- (a) Consists of a minimum of five (5) dissimilar components;
- (b) Provides the equivalent of one-third (1/3) of the dietary reference intakes;
- (c) Meets the requirements of the Dietary Guidelines for Americans; and
- (d) Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

~~(17)~~~~(16)~~ "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

~~(18)~~~~(17)~~ "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

~~(19)~~~~(18)~~ "Nutrition counseling" means individualized guidance:

- (a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, or medications use, or to caregivers; and
- (b) Provided one-on-one by a licensed dietitian to address options and methods for improving the individual's nutrition status.

~~(20)~~~~(19)~~ "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

~~(21)~~~~(20)~~ "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

~~(22)~~~~(21)~~ "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

~~(23)~~~~(22)~~ "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

~~(24)~~ "Rural" means a community with less than 50,000 population living in a rural area as designated by the most current listing from the U.S. Census Bureau.

~~(25)~~~~(23)~~ "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

~~(26)~~~~(24)~~ "State nutrition program for older persons" means the nutrition program administered by the department that includes:

- (a) Meals;
- (b) Nutrition screening and education; and
- (c) Nutrition assessment and counseling.

~~(27)~~ "Target group" means:

(a) Low-income individuals, including low-income minority older individuals;

(b) Older individuals with limited English proficiency;

(c) Older individuals residing in rural areas; ~~or~~and

(d) Older individuals at risk for institutional placement.

(28) "Traditional meal" means a ready to eat hot meal.

(29) "Urban" means a community with 50,000 or more population living in an urbanized area as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility. (1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

- (a) Is aged sixty (60) or older;
- (b) Is the spouse of an individual aged sixty (60) or older; or
- (c) Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

- (a) A volunteer providing services during meal hours; or
- (b) An individual under age sixty (60) who:

1. Has a disability; and

2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

- (a) 1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;
- 2. Is unable to attend a congregate site because of illness or an incapacitating disability; and
- 3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or
- (b) 1. Is under age sixty (60);
- 2. Has a disability; and
- 3. Resides with a homebound individual aged sixty (60) or over.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

- (1) Congregate or home delivered meals funded by the OAA;
- (2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;
- (3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;
- (4) NSIP funding for expansion of meals served in the state; or
- (5) Other funds designated in the AAAIL's approved area plan such as United Way or other local funding.

Section 4. Congregate Nutrition Services. (1)(a) ~~Except in a rural area where such frequency is not feasible and a less frequency is approved by the department, pursuant to 42 U.S.C. 3030e,~~ Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week, in each rural ~~or~~and urban community, within the nutrition service provider's service and planning area, provides at least one (1) hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide in a congregate setting.

(b) A waiver may be approved by the department for a rural area to serve less frequently if the budget does not sustain five (5) days per week, pursuant to 42 U.S.C. 3030e.

~~(2)~~~~(4)~~ The requirements established in this subsection shall apply to the transportation of meals to a congregate site.

(a) 1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b) 1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

~~(3)~~~~(2)~~ The order of service shall be as established in this subsection.

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk or~~and~~ other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal service.

(f) After all participants have been served, volunteers or~~and~~ other staff may be served.

(g) Food items left over at the point of service shall be:

- 1. Offered as seconds to a participant, if requested by the participant and after all have been served; or
- 2. Discarded.

~~(4)(3)(a)~~ Only complete meals shall be claimed for payment.
 (b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

~~(5)(4)~~ Each center's carry-out policy shall:

(a) Prohibit the carryout of potentially hazardous foods in accordance with 902 KAR 45:005;

(b) Assure a participant is advised concerning the risks involved if foods are held at unsafe temperatures; and

(c) Assure staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

~~(6)(5)~~ A center shall not provide carry out of unserved or left over meals.

~~(7)(6)~~ A participant shall have an opportunity to complete a satisfaction survey ~~[developed by the nutrition service provider]~~ to evaluate meals and service at least annually.

~~(8)(7)(a)~~ An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;
2. Consumer approaches to food safety and food purchasing;
3. Food fads and diets;
4. Physical activity; and
5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

Section 5. Home Delivered Nutrition Services. **(1)** Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, in each rural ~~or~~ and urban community within the nutrition service provider's service and planning area, provides at least one (1) home delivered hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide. **(2)(1)(a)** Except as provided in paragraph (b) of this subsection, a meal shall be delivered only to an eligible person in the eligible person's home.

(b) A meal may be left with a designee of the older person if the designee has been informed of the requirements of the nutrition program and has indicated a willingness to comply with those requirements.

~~(c) For a traditional meal[traditional meals], an AAAIL shall train and monitor delivery staff to ensure that the meal participant or designee acknowledges delivery of the meal.~~

(3)(2) Documentation for the provision of a non-traditional meal[non-traditional meals] shall show:

(a) The participant has expressed a preference for the non-traditional meal[meals] or lives off an established route;

(b) Proper storage and heating facilities are available in the home;

(c) The participant is able to prepare and consume the meal alone or with available assistance; and

(d) Cost is no more than a traditional meal.

(4)(3)(a) A provider of home delivered meals shall use methods of delivery that shall prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) Meals shall be delivered in accordance with the requirements established in this paragraph.

1. Delivery routes shall be established by the nutrition service provider to minimize nutrient loss and to facilitate temperature retention.

2. Meals shall be delivered within ~~four (4)[three (3)]~~ hours from the end of preparation to the final destination~~[unless a waiver is approved by the licensed dietitian or certified nutritionist to alleviate a temporary problem meeting this deadline].~~

3. Hot food shall be maintained at or above 135 degrees Fahrenheit.

4. Cold food shall be maintained at or below forty-one (41) degrees Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

5.a. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route.

b. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal or the temperature is above forty (40) degrees Fahrenheit, the meal shall not be refrozen for later use. The meal shall be either:

- (i) Heated and consumed immediately; or
- (ii) Discarded.

~~(5)(4)~~ A participant shall have an opportunity to:

(a) Complete a satisfaction survey ~~[developed by the nutrition service provider]~~ to evaluate meals and services at least annually; and

(b) Provide ongoing comments for preparation of menus.

~~(6)(5)(a)~~ An ongoing participant nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(8)(7)(b) of this administrative regulation.

~~(7)(6)~~ A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

- (a) Does not register the correct temperature on delivery; or
- (b) Is not delivered.

Section 6. Emergency Meals. (1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need.

(2) An emergency meal shall:

(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;

(b) Meet the nutritional requirements of this program;

(c) Follow a menu that has been:

1. Approved by a certified nutritionist or licensed[the agency nutrition service provider] dietitian; and]

2. Planned for a minimum of three (3) days;

~~**[3-Delivered, reported and billed in the same month; and 4. Not to be held for more than sixty (60) days;]**~~

(d) Use frozen meals only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided if necessary to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used if the nutritional requirements of the Dietary Guidelines of Americans are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

~~**[(9) For reporting purposes, meals shall be delivered, reported, and billed by a service provider during the month][counted by a senior center during the quarter][of distribution.]**~~

Section 7. Nutrition Services Incentive Program (NSIP). (1) Additional funding received from the NSIP for the nutrition program

shall be used exclusively to purchase food and shall not be used to pay for another nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the fiscal year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services ~~or~~ and other foods produced in the United States of America; or

2. Meals if the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis if each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities if the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services; and

(d) Project management costs, including personnel, equipment, and supply costs.

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, KRS Chapter 45A.

(b) Meals shall:

1. Be bid without regard to funding source; and

2. Contain both a meal preparation cost and a delivery cost.

Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have written policies and procedures to carry out the AAAIL's responsibilities as established in this subsection. The AAAIL shall:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional services pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures on how to get vaccines in the individual's community for:

1. Influenza;

2. Pneumonia; and

3. Shingles;

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42 U.S.C. 3025(a)(2)(E);

3. a. Nutrition screening and counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services.

a. Nutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually.

b. The results of this screening shall be reported to the department.

c. A participant who receives a nutrition score of six (6) or higher shall have documentation of further action **based on a referral[such as referrals] to a:**

(i) Dietitian for nutrition counseling; or

(ii) Participant's physician;

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and

6. A plan for furnishing emergency meals during an emergency, such as:

a. Inclement weather conditions;

b. Power failure;

c. A disaster that may cause isolation; or

d. A medical emergency;

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals; and

(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year.

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 12[49] of this administrative regulation.

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Section 10. Nutrition Site Operation. (1)(a) Congregate meal services shall be funded at a site if the site has been approved by the department.

(b) The services shall not become operational until an on-site visit by the department has been completed and approval given by the office, except for an emergency situation/emergency situations.

(2) Prior to approval of any site, the site[if] shall be inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes; and

(c) The department for compliance with 42 U.S.C. 3027(a)(8).

(3) A site shall:

(a) Be located as near as possible to the target group of individuals;

(b) Comply with the confidentiality and disclosure requirements of KRS 194A.060(2); and

(c) Be clearly identified to the public with a sign.

(4)(a) Selection of a site to offer congregate meal services shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly.

(b) The following factors shall be given consideration in choosing a site:

1. Demographic information and projections;

2. Accessibility to the maximum number of people who are socially or economically deprived;

3. Proximity to other services and facilities;

4. Convenience to public or private transportation or location within comfortable walking distance for participants;

5. Clear of structural barriers or difficult terrain; and

6. The safety and security of participants and staff.

(5) A site shall:

(a) Take necessary actions to create for handicapped older people barrier-free access and movement within[with] the facility in conformance with the requirements of 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973;

(b) Make arrangements for security of site equipment, furniture, and files;

(c) Have signs visible for exits, entrances, and other areas of importance;

(d) Have safety features appropriate to special uses in a bathroom and kitchen;

(e) Adopt procedures for fire safety, including:

1. Fire drills;

2. Inspection;

3. Maintenance of fire extinguishers; and

4. Training by fire department personnel; and

(f) Maintain and repair the site.

(6) A site that does not meet the requirements of subsection (5) of this section shall comply with a corrective action plan administered by the department.

(7)(a) A site shall have an individual, either volunteer or paid staff, who shall be responsible for the administration of the site.

(b) At least one (1) staff person or trained volunteer shall be present at the site during hours of operation.

(c) A site shall have available the following minimum services: [Minimum services shall be available at a site as follows:]

1. At least one (1) hot meal in accordance with Section 4 of this administrative regulation;

2. Outreach services that may be funded by Title III-B or Title III-C;

3. Information and referral; and

4. Nutrition education.

(d) An optional service may be home-delivered meals.

(e) A congregate meal shall[may] be:

1. Prepared on-site;[on-site]

2. Catered; or

3. Prepared in a central kitchen.

Section 11. Kitchen Approval. (1) [Upon the effective date of this administrative regulation,] A new kitchen preparing a congregate meal or home delivered meal shall not become operational until inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes;

(c) An AAAIL inspector[inspection] for compliance with DAIL-NP-17.96, Kitchen Checklist[910 KAR 1:290]; and

(d) The department using a DAIL-NP-17.96, Kitchen Checklist, for compliance with:

1. Facility specifications;

2. Food preparation;

3. Use of equipment;

4. Delivery; and

5. Clean up.[-and]

(2) The department shall notify the AAAIL[AAAL] of kitchen operation approval within ten (10) days of the initial on-site visit.

Section 12. Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have written policies and procedures to carry out the responsibilities of the service provider as established in this subsection. The nutrition service provider shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;

(b) Provide a recipient with an opportunity to voluntarily contribute to the cost of the service. Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:

1. May be solicited if[in] the method of solicitation is noncoercive; and

2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service;

(c) Assure that an older person shall not be denied service because the older person does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his or her household in imminent danger;

(f) Make arrangements for services to older persons in weather-related emergencies;

(g) Assist a participant with access to benefits under other programs;

(h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) Have a site director, on a paid or volunteer basis, responsible for activities at the site.

1. Congregate and home delivered meals funds shall pay up to a maximum of five (5) hours, per day, of a paid[the] site director's time; and

2. Other funding sources may be used to pay for additional hours;

(j) Permit staff of the AAAIL, the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k) Attend meetings and training sessions as requested by the AAAIL and the department.

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

Section 13.[44-] Meal Planning. (1) Nutrient dense meals shall be planned using preparation and delivery methods that preserve

the nutritional value of foods. The use of saturated fats, salt, and sugar shall be restricted to maintain good health, in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.

(2)(1) Menus shall be:

- (a) Planned through a formal procedure for soliciting participant comments established in each district;
- (b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, used at least for five (5) weeks;
- (c) In compliance with the Dietary Guidelines for Americans;
- (d) Provided to each participating older individual and shall include a meal plan to provide:
 1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);
 2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(II); or
 3. One hundred (100) percent of the allowances established in the dietary reference intakes, if the individual is provided three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);
- (e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;
- (f) Certified by the licensed dietitian or certified nutritionist as meeting the nutritional requirements;
- (g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. If a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and
- (h) 1. Posted in a conspicuous location, including at each congregate meal site and each preparation site; or
2. Provided in advance to each participant receiving home delivered meals.

(3)(2) Special menus which allow for religious, ethnic, cultural, or regional dietary practices may be provided if foods and preparations are available.

(4)(3)(a) Additional foods, such as fresh produce, baked items, or donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(5)(4)(a) If a potluck meal is served at a particular site, a congregate meal shall not be served at that site for that particular mealtime.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

Section 14.[12:] Consultation Requirements. A licensed dietitian or certified nutritionist shall provide an AAAIL with a minimum of four (4) hours of consultation per month including:

- (1) Food quality, safety, and service;
- (2) Assessment of employee practices;
- (3) Staff training;
- (4) Menu preparation or review;
- (5) Assurances that nutrition screening, assessment, and counseling is completed;
- (6) Reliable nutrition education is provided to a congregate and home delivered meal participant; and
- (7) Individual diet counseling.

Section 15.[13:] Food Procurement. (1) Foods purchased for use in the nutrition program shall be obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.

(2)(a) Term contracts may be used for repetitively purchased items.

(b) Fixed quantity contracting shall be used if definite items and quantities can be determined for future delivery dates.

Section 16.[14:] Food Preparation. (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.

(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(2) The standards established in this section shall apply for quality control.

(a) Food production standards.

1. Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.

2. Protein foods shall be cooked completely once the cooking cycle has begun.

3. Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.

4. Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) The holding time for hot foods shall not exceed four (4)~~three (3)~~ hours after preparation~~, unless a waiver is approved by the licensed dietitian or certified nutritionist to alleviate a temporary problem meeting this deadline~~.

(c) Temperature standards.

1. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135 degrees Fahrenheit during transportation and service.

2. Cold foods shall not exceed forty-one (41) degrees Fahrenheit during transportation and service.

3. Thermometers used to check food temperatures shall be:

- a. Of metal stem-type construction;
- b. Numerically scaled;
- c. Accurate to plus or minus three (3) degrees Fahrenheit; and
- d. Checked periodically to ensure that each thermometer is registering accurately.

4. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

(3)(a) Food preparation facilities shall be in compliance with state and local fire, health, sanitation, and safety regulations which apply to food service operations.

(b) A food preparation and service kitchen shall be inspected periodically by state and local health officials and the department dietitian.

(4) Standards for food handling and personal hygiene shall be in accordance with the food service requirements of the Kentucky Food Code governed by 902 KAR 45:005.

Section 17.[15:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-NP-17.96 Kitchen Checklist", edition 5/12;

(b) "DAIL-NP-17.9.8, Meal Planning Nutrient Requirements", December 30, 2009; and

(c) ~~(b)~~ "Dietary Guidelines for Americans", 2010, U.S. Department of Agriculture, and U.S. Department of Health and Human Services.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The Dietary Guidelines for Americans may be accessed online at www.dietaryguidelines.gov.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 13, 2012 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012
ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

NONE

PROPOSED AMENDMENTS

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 3:010. Certification for school superintendent.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(b) requires that a teacher education 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. This administrative regulation establishes the preparation and certification program for school superintendent.

Section 1. Conditions and Prerequisites. (1) The professional certificate for instructional leadership - school superintendent shall be issued to an applicant who has completed:

(a) An approved program of preparation, as required by this administrative regulation and pursuant to 16 KAR 5:010;

(b) The appropriate requirements for certification, as established in KAR Title 16; and

(c) At least two (2) years of experience in a position of school principal, supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of district-wide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board.

(2) The professional certificate for instructional leadership - school superintendent shall be valid for the position of school superintendent or assistant superintendent.

(3) Prerequisites for the program of preparation for the professional certificate for instructional leadership - school superintendent shall include:

(a) Qualifications for a Kentucky teaching certificate;

(b) Admission to the preparation program on the basis of criteria developed by the teacher education institution pursuant to 16 KAR 5:010;

(c) Completion of a master's degree;

(d) 1. Except as provided in subparagraph 2 of this paragraph, completion of the Levels I and II preparation and certification for the position of school principal, or supervisor of instruction; or

2. For a candidate who completed preparation for principal prior to 1988, completion of the assessments for administration; and

(e) Completion of at least three (3) years of full-time teaching experience, including at least 140 days per year.

Section 2. A preparation program for the professional certificate for instructional leadership - school superintendent shall be consistent with the six (6) standards included in "Educational Leadership Policy Standards: ISLLC2008" [~~"Interstate School Leaders Licensure Consortium Standards for School Leaders"~~] and the six (6) standards included in "Technology Standards for School Administrators" incorporated by reference in [~~found in~~] 16 KAR 3:050, Section 3, and incorporated by reference. (1) Beginning August 1, 2014, each accredited educator preparation institution shall have a formal application procedure for admission to a superintendent preparation program, which shall include the following:

(a) A written letter of recommendation from a supervisor or an education agency representative attesting to the applicant's suitability for school leader;

(b) An admissions portfolio which documents that the applicant demonstrates the following:

1. The ability to improve student achievement;

2. Knowledge of school laws related to school finance, school operations, and personnel matters;

3. The ability to implement curriculum, instruction, and assessment;

4. A commitment to ongoing professional growth;

5. Effective communication skills; and

6. The ability to build relationships, foster teamwork, and develop networks; and

(c) Proof the applicant has completed a master's degree program.

(2) Beginning August 1, 2014, each superintendent preparation program shall:

(a) Utilize a clinical model which requires candidates to:

1. Work in diverse school and district central office settings; and

2. Solve problems based on the school district's needs;

(b) Develop a mentoring plan for each candidate; and

(c) Design a method to assess the effectiveness of a candidate's field experience.

(3) Beginning August 1, 2014, a superintendent preparation program's course work shall include a minimum of twelve (12) credit hours.

(4) Beginning August 1, 2014, a superintendent preparation program's curriculum of study shall include the following:

(a) The study of the roles and responsibilities of a superintendent which includes:

1. Leadership theory and development;

2. The impact of board leadership on student learning;

3. Community engagement focused on student learning;

4. Capacity building;

5. District management;

6. Culturally responsive leadership;

7. Ethics;

8. Time management; and

9. Professional development;

(b) The federal, state, and local laws governing school system administration with an emphasis on the following school functions:

1. Finance;

2. Personnel;

3. Food service;

4. Facilities;

5. Transportation;

6. School safety; and

7. School-based councils; and

(c) Coursework which will assist the candidate to:

1. Develop skills that facilitate rigorous curriculum, engaging instruction, professional development, and a comprehensive assessment system;

2. Implement an aligned, rigorous standards-based curriculum in every school which prepares all students to be globally competitive for postsecondary education and work;

3. Collaborate with district staff and school leaders to coordinate a system of support that ensures engaging and relevant instruction in every classroom;

4. Ensure that a comprehensive assessment system is appropriately used at the district, school, and classroom level for informed decision making that improves learning;

5. Work with district and school staff to develop and implement a coordinated system of student academic support for students whose achievement does not meet established benchmarks; and

6. Ensure that the school system has an articulated design for preschool, early childhood, middle childhood, adolescent, and adult education that represents research and best practice.

(5) Beginning August 1, 2014, a superintendent preparation program shall require all candidates to complete a capstone project to be presented to a panel of program faculty and practicing school administrators prior to completion of the program.

Section 3. Issuance and Renewal. (1) The initial professional certificate for instructional leadership - school superintendent shall be issued for five (5) years to a candidate who has completed an

approved program of preparation for superintendent at the post-master's level. Application shall be made on Form TC-1, incorporated by reference in 16 KAR 2:010.

(2) Each five (5) year renewal shall require:

(a) The completion of two (2) years of experience as a school superintendent or assistant superintendent;

(b) Three (3) semester hours of additional graduate credit or the equivalent related to the position of school superintendent; or

(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) If a lapse in certification occurs for lack of the renewal requirements, the certificate shall be reissued for a five (5) year period after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program. ~~[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Interstate School Leaders Licensure Consortium Standards for School Leaders", November 2, 1996;~~

~~(b) "Form TC-1, rev. 10/02; and~~

~~(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CATHY GUNN, Chairperson

APPROVED BY AGENCY: August 6, 2012

FILED WITH LRC: August 10, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2012 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 October 1, 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 preparation program and certification requirements for school district superintendents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to superintendent preparation programs and candidates of the requirements for obtaining and maintaining a superintendent certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation establishes the requirements for admission to a superintendent preparation program and the program requirements for superintendent preparation. This administrative regulation also establishes the requirements for superintendent certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes new admission processes for superintendent preparation programs and course work for superintendent preparation programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that public school superintendents are properly prepared for their positions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments for Kentucky superintendent certification.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the new requirements for admission to a superintendent preparation program and the program requirements for superintendent preparation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking superintendent certification.

(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 school districts will not be required to take any additional action. The educator preparation programs will need to modify their superintendent preparation programs to comply with the regulation. Applicants will need to continue to refer to this regulation for the requirements for certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be an initial cost to educator preparation programs when they modify their programs to meet the standards established in this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of competent superintendents.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for a principal certificate will be held to the same standard.

VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities, and the 174 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

(3) 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 effect on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program, but establishes the minimum standards for superintendent preparation and certification.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 6:030. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1)(a) The certificate for school principal shall be valid for serving in the position of principal or assistant principal.

(b) A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal.

(c) A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program as required by 16 KAR 7:020 if the applicant has had less than two (2) years of successful experience as a principal in another state

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment (6011)[(4044)] - 160; and

(2)(a) Until December 31, 2012, [August 31, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices – eighty-five (85) percent correct responses; or

(b) Beginning September 1, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices (1015) [administered by the Educational Testing Service] with no passing score; or

(b) Beginning January 1, 2013, the Kentucky Specialty Test of Instructional and Administrative Practices (1015) -158.

Section 3. The successful completion of the School Leaders Licensure Assessment shall not be required for an applicant who has:

(1) Two (2) years of experience as a certified principal in another state; and

(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required assessments [School Leaders Licensure Assessment] on a date established by the Educational Testing Service. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the Educational Testing Service.

(2) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the Educational Testing Service and the Education Professional Standards Board.

(3) An applicant shall seek information regarding the dates and location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the Educational Testing Service.

(2)[(a) Until August 31, 2011, an applicant for the Kentucky Specialty Test of Instructional and Administrative Practices shall pay a fee of eighty (80) dollars.

(b) Beginning September 1, 2011, An applicant for the Kentucky Specialty Test of Instructional and Administrative Practices shall pay all fees assessed by the Educational Testing Service.

Section 6. An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

(2) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. On an annual or biennial basis, the Education Professional Standards Board shall collect and analyze data provided by the Educational Testing Service through score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

CATHY GUNN, Chairperson

VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012

APPROVED BY AGENCY: August 6, 2012

FILED WITH LRC: August 10, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2012 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 October 1, 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, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for principal certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to principal preparation candidates of the assessment requirements for obtaining and maintaining a principal certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required principal certification assessments and their corresponding minimum acceptable scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the minimum test score for the Kentucky Specialty Test of Instructional Practices (1015) to be 158. Other amendments are to remove superfluous language to improve the clarity of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky principal certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes a minimum score for the Kentucky Specialty Test of Instructional Practices to ensure that all Kentucky principals are competent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional principal certification.

(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 school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to this regulation or the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to this regulation or the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of competent principals.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for a principal certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities, and the 174 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.027, KRS 161.028, KRS 161.030.

(3) 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 effect on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program, but requires applicants for principal certification to take and pass certain assessments to ensure the principal force meets the minimum standards of competency established by the Education Professional Standards Board.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)**

201 KAR 2:020 Examination.

RELATES TO: KRS 218A.205(3)(g), 315.050

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.050(2), 315.191(1), (2), (4)(1)(a);

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(2) and 315.191(1)(c) ~~authorize~~require the board to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205(3)(g) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.

Section 1. The examination for licensure shall include:

- (1) The North American Pharmacist Licensure Examination (NAPLEX); and
- (2) The Multistate Pharmacy Jurisprudence Examination (MPJE).

Section 2. The passing score on the required examinations shall be:

- (1) At least seventy-five (75) on the basis of the NAPLEX and ~~the~~ MPJE grades shall not be used in computing the NAPLEX; and
- (2) At least seventy-five (75) on the basis of the MPJE.

Section 3. If an applicant fails to obtain the necessary scores in any of the tests described in Section 2 of this administrative regulation, the applicant~~he~~ may upon proper application retake the tests upon the payment of the fee set forth in 201 KAR 2:050 plus any direct costs for test materials and supplies. An applicant who has failed any test may retake that test within one (1) year of the date the applicant first ~~failed~~fails the test without having to reapply.

Section 4. All results of examinations shall be preserved according to the Board of Pharmacy Record Retention Schedule.

Section 5. Fees submitted with an application shall be nonrefundable.

Section 6. Prior to approval for examination, an applicant shall:

- (1) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation; and
- (2) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 7. License. Fee. An applicant shall submit:

- (1) An Initial Application for Pharmacist Licensure pursuant to KRS 315.050; and
- (2) As appropriate, the fee established by 201 KAR 2:050, Section 1(1).

Section 8. Incorporation by Reference. (1) "Initial Application for Pharmacist Licensure", Form 1, 7/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy,

State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday 8:00 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 27, 2012 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday October 1, 2012 at 4:30 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time, place, method, manner, scope and subjects of examination and establishes the examination requirements for obtaining a license to practice pharmacy in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the examination requirements to obtain a license to practice pharmacy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding examinations to obtain a license to practice pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for examinations.

(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 will require an applicant to submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner DataBank of the United States Department of Health and Human Services.

(b) The necessity of the amendment to this administrative regulation: Requires applicants that seek to obtain a license to practice pharmacy in Kentucky to submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for examination to obtain a license to practice pharmacy in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to require that individuals that apply for a license to practice pharmacy in Kentucky submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of the Kentucky State Police or the Federal Bureau of Investigation and a query to

the National Practitioner Data Bank of the United States Health and Human Services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect around 350 individuals each year that apply for a license to practice pharmacy in Kentucky and will affect the Kentucky Board of Pharmacy and the Department of the Kentucky State Police.

(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: The Board will have to query the National Practitioner Data Bank of the United States Department of Health and Human Services on each applicant and the Department of the Kentucky State Police or the Federal Bureau of Investigation will conduct a nation-wide criminal background investigation on each applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services will be required to pay a fee to the Department of the Kentucky State Police criminal background investigation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful passing of a criminal background investigation and National Practitioner Data Bank of the United States Department of Health and Human Services will be allowed to sit for examinations to obtain a license to practice pharmacy in Kentucky.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: \$7,500 yearly for the cost of the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee will be accessed to an applicant for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(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: A new fee will be accessed to each individual that is applying for a license to practice pharmacy in Kentucky.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any individual applying for a license to practice pharmacy in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy and the Department of the Kentucky State Police will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(g), 315.191(1) requires or authorizes the action taken by this administrative regulation.

(3) 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? \$9,375 for the Board of Pharmacy and undetermined for the Department of

the Kentucky State Police.

(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? \$9,375 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(c) How much will it cost to administer this program for the first year? \$7,500.

(d) How much will it cost to administer this program for subsequent years? \$7,500.

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 Pharmacy (Amendment)

201 KAR 2:030. License transfer.

RELATES TO: KRS 315.210

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 requires the board to establish conditions for licensure by reciprocity. KRS 218A.205(3)(g) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity.

Section 1. Definitions. (1) "Board" is defined by KRS 315.010(3).

(2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(3) "NABP" means the National Association of Boards of Pharmacy.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if the:

(1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure at the time the license in the other jurisdiction was granted;

(2) Applicant has held in good standing, an active license to practice pharmacy during the entire year preceding the time of filing an application;

(3) Applicant has:

(a) Completed and certified the ["NABP Preliminary Application for Transfer of Pharmacist License[Pharmaceutic Licensure] form; and

(b) Received an ["NABP Official Application for Transfer of Pharmacist License[Pharmaceutic Licensure];

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;[and]

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal background investigation by means of finger-print check by the Department of Kentucky State Police or the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the ["NABP Preliminary Application for Transfer of Pharmacist License[Pharmaceutic Licensure] form, including:

(1) Name, maiden, and other names used currently or pre-

viously;[-]

- (2) Address, telephone number;
- (3) Date and place of birth, and current age;[-]
- (4) Social Security number;
- (5) Citizenship;
- (6) Gender;
- (7) State of original license by examination, including:
 - (a) License number;
 - (b) Original date of issue;
 - (c) Current status of original licensure; and
 - (d) State for which license transfer is requested;
- (8) Pharmacy education, including:
 - (a) Name and location of pharmacy school;
 - (b) Name of pharmacy degree;
 - (c) Date degree was received;
 - (d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;
- (9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;
- (10) Total hours of practical experience prior to licensure as a pharmacist, including the State Board of Pharmacy with which the hours are filed;
- (11) States, dates, and results of pharmacist licensure examinations;
- (12) Pharmacist licenses obtained by:
 - (a) Score transfer; and
 - (b) Licensure transfer;
- (13) Practice and employment, including nonpharmacist employment, from initial licensure to the date of filing the application; and
- (14) Record of charges, convictions, and fines imposed, or certification that the applicant has not been convicted, fined, disciplined, or had a license revoked.

Section 4. The board shall accept a license transfer from a jurisdiction that:

- (1) Is an active member of the NABP; and
- (2) Grants license transfer to a pharmacist pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. Fee. An applicant shall include the fee specified by 201 KAR 2:050, Section 1(2), (20)(3).

Section 7. (1) "NABP Preliminary Application for Transfer of Pharmacist License[Pharmaceutic Licensure]", [(3)/06[]], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601[~~Spindletop Administration Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511~~], Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing shall be held on this administrative regulation on Thursday, September 27, 2012 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments shall be accepted until Monday, October 1, 2012 at 4:30 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the time, place, method, manner, scope and subjects of examination and establishes the examination requirements for obtaining a license to practice pharmacy in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the examination requirements to obtain a license to practice pharmacy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding examinations to obtain a license to practice pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for examinations.

(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 will require an applicant to submit to a nation-wide criminal background investigation by means of fingerprint check to the Department of Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(b) The necessity of the amendment to this administrative regulation: Requires applicants that seek to obtain a license to practice pharmacy in Kentucky to submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police or Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for examination to obtain a license to practice pharmacy in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to require that individuals that apply for a license to practice pharmacy in Kentucky submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of the Kentucky State Police or the Federal Bureau of Investigation and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect around 400 individuals each year that apply for a license to practice pharmacy in Kentucky and will affect the Kentucky Board of Pharmacy and the Department of the Kentucky State Police.

(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: The Board will have to query the National Practitioner Data Bank of the United States Department of Health and Human Services on each applicant and the Department of the Kentucky State Police will conduct a criminal background investigation on each applicant

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services will be required to pay a fee to the Department of the Kentucky State Police for a criminal background investigation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful passing of the nation-wide criminal background investigation and National Practitioner Data Bank of the United States Department of Health and Human Services will be allowed to sit for examinations to obtain a license to practice pharmacy in Kentucky.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: \$8,500 yearly for the cost of the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee will be accessed to an applicant for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

(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: A new fee will be accessed to each individual that is applying for a license to practice pharmacy in Kentucky.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any individual applying for a license to practice pharmacy in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy and the Department of the Kentucky State Police will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(g), 315.191(1) requires or authorizes the action taken by this administrative regulation.

(3) 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? \$10,000 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(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? \$10,000 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(c) How much will it cost to administer this program for the first year? \$8,500.

(d) How much will it cost to administer this program for subsequent years? \$8,500.

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 Pharmacy (Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.402, 315.518(1), 315.520(4)

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.191(1), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.402(1), 315.518(1), 315.520(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation provides reasonable fees for this agency to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates and the issuance and renewal of licenses and permits:

(1) Application for a licensee for pharmacist examination - \$150;[-]

(2) Application and initial license for a pharmacist license by license transfer - \$250;[-]

(3) Certifying the grades of a licensee of Kentucky to the licensing agency of another state - ten (10) dollars;[-]

(4) Annual renewal of a pharmacist license - seventy (70) dollars;[-]

(5) Delinquent renewal penalty for a pharmacist license - seventy (70) dollars;[-]

(6) Annual renewal of an inactive pharmacist license - ten (10) dollars;[-]

(7) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;[-]

(8) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;[-]

(9) Application for a permit to operate a pharmacy - \$100;[-]

(10) Renewal of a permit to operate a pharmacy - \$100;[-]

(11) Delinquent renewal penalty for a permit to operate a pharmacy - seventy-five (75) dollars;[-]

(12) Change of location or change of ownership of a pharmacy or manufacturer permit - seventy-five (75) dollars;[-]

(13) Application for a permit to operate as a manufacturer - \$100;[-]

(14) Renewal of a permit to operate as a manufacturer - \$100;[-]

(15) Delinquent renewal penalty for a permit to operate as a manufacturer - \$100;[-]

(16) Change of location or change of ownership of a wholesale distributor license - seventy-five (75) dollars;[-]

(17) Application for a license to operate as a wholesale distributor - \$100;[-]

(18) Renewal of a license to operate as a wholesale distributor - \$100;[-]

(19) Delinquent renewal penalty for a license to operate as a wholesale distributor - \$100;

(20) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services – twenty-five (25) dollars;

(21) Application for a license to operate as a home medical equipment supplier - \$200;

(22) Renewal for a license to operate as a home medical equipment supplier - \$200; and

(23) Delinquent renewal penalty for a license to operate as a home medical equipment supplier - \$150.

STEVE BESHEAR, Governor

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing shall be held on this administrative regulation on Thursday, September 27, 2012 at 9:00 a.m. at the Board's office,

State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, October 1, 2012 at 4:30 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for services rendered to perform duties and responsibilities.

(b) The necessity of this administrative regulation: This regulation is necessary to establish fees for services rendered to perform duties and responsibilities of the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the fees for services rendered by the board.

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

(a) How the amendment will change this existing administrative regulation: This regulation will establish a fee for a query to the National Practitioner Data Bank of the United States Department of Health and Human Services and a fee for an applicant for a Home Medical Equipment provider, a renewal application, and a delinquent penalty fee.

(b) The necessity of the amendment to this administrative regulation: Requires applicants that seek to obtain a license to practice pharmacy in Kentucky to submit to the National Practitioner Data Bank of the United States Department of Health and Human Services and requires a fee for applicants for a Home Medical Equipment provider license, renewal license, or a delinquent penalty fee.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for fees for a query to the National Practitioner Data Bank of the United States Department of Health and Human Services and to obtain a license for a Home Medical Equipment provider, a renewal license, and a delinquent penalty fee.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to collect fees from an applicant seeking to obtain a pharmacist license in the Commonwealth and a Home Medical Equipment provider license, renewal license or a delinquent penalty.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect around 750 individuals each year that apply for a license to practice pharmacy in Kentucky and will affect the Kentucky Board of Pharmacy and the Department of the Kentucky State Police. The board anticipates that this will affect around 400 applicants obtaining a Home Medical Equipment license each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: The Board will have to query the National Practitioner Data Bank of the United States Department of Health and Human Services on each applicant. The Board will require an individual to obtain a license to operate as a Home Medical Equipment provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of \$25 for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services and each applicant for a Home Medical Equipment License or Renewal license will pay a \$200 fee each year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant upon successful passing of the National Practitioner Data Bank of the United States Department of Health and Human Services will be allowed to sit for examinations to obtain a license to practice pharmacy in Kentucky. Upon a completed application or renewal application an applicant will be able to obtain a license to operate as a Home Medical Equipment Provider.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: \$7,500 yearly for the cost of the query to the National Practitioner Data Bank of the United States Department of Health and Human Services. \$80,000 yearly for the cost of licensing Home Medical Equipment Providers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee will be accessed to an applicant for the query to the National Practitioner Data Bank of the United States Department of Health and Human Services. A fee will be accessed to an applicant to obtain a license or renew a license for a Home Medical Equipment provider.

(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: A new fee will be accessed to each individual that is applying for a license to practice pharmacy in Kentucky. A new fee will be accessed to each applicant to obtain a license or renew a license for a Home Medical Equipment provider.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any individual applying for a license to practice pharmacy in Kentucky and to applicants to obtain a license or renew a license for a Home Medical Equipment provider.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy and the Department of the Kentucky State Police will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(g), 315.191(1) requires or authorizes the action taken by this administrative regulation.

(3) 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? \$98,750 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(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? \$98,750 for the Board of Pharmacy and undetermined for the Department of the Kentucky State Police.

(c) How much will it cost to administer this program for the first year? \$87,500

(d) How much will it cost to administer this program for subsequent years? \$87,500

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 Pharmacy
(Amendment)**

**201 KAR 2:061. Procedures followed by the Kentucky
Board of Pharmacy in the investigation and hearing of complaints.**

RELATES TO: KRS 218A.205, 315.131, 315.191(4)

STATUTORY AUTHORITY: KRS 218A.205(3)(e), (f), (5).

315.191(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to the practice of pharmacy, including a process for complaints and hearings. KRS 218A.205(3)(e), (f), and (5) require the board to promulgate administrative regulations relating to complaints, licensure standards, and disciplinary actions. This administrative regulation establishes board procedure for investigations, and the administrative hearings process, and the penalties for violations.

Section 1. (1) A complaint against a licensee may:

(a) Be submitted orally or in writing; and

(b) Originate from a consumer, competitor, health professional, government or provider agency, or other interested party.

(2) A complaint shall be accepted anonymously if the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(3) A complaint shall not be required to be sworn to or notarized. [Complaints against licensees may be oral or written, from such sources as consumers, competitors, health professionals, government and provider agencies, or other interested parties.]

Section 2. (1) Except as provided by subsection (2) of this section, upon receipt of a complaint, the board shall instruct its staff to:

(a)[(4)] Conduct an investigation; and

(b)[(2)] Report the conclusions and recommendations of the investigation to the:

1. [(a)] Executive director; and

2. [(b)] Board member assigned by the board to review conclusions and recommendations relating to an investigation.

(2) If the complaint pertains to the improper, inappropriate, or illegal dispensing of controlled substances, the board shall:

(a) File a report with the Attorney General's office, the Office of Inspector General's office, and the Department of the Kentucky State Police within three (3) business days;

(b) Commence an investigation within seven (7) days of the complaint; and

(c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

Section 3. (1) A panel consisting of the assigned board member, the executive director, and the pharmacy drug inspector shall review the conclusions and recommendation relating to an investi-

gation.

(2) The panel shall recommend one (1) of the following options to the board:

(a) A reprimand restricting the licensee, permit or certificate holder;

(b) The issuance of a formal complaint, order, and notice of hearing;

(c) Dismissal of the case with or without prejudice; or

(d) Returning the case to the inspector for further investigation.

(3) Documentation of a board reprimand shall be maintained in the appropriate board files.

Section 4. (1) With the approval of the board, the executive director shall notify the licensee, permittee, or certificate holder, in writing, that he or she may request an administrative conference before the executive director and the pharmacy drug inspector to be held prior to the hearing.

(2) The licensee, permit or certificate holder shall be notified that he or she may appear with counsel.

(3) An administrative conference shall be held to determine whether an agreement may be reached to resolve the complaint that is acceptable to all parties.

(4) If an agreement is reached, it shall be submitted to the board for approval and board order.

Section 5. (1) A settlement conference may be requested by the attorney for a licensee, permit or certificate holder.

(2) If the board approves the request, a settlement conference shall be held by the attorney for the licensee, permit or certificate holder, and the board attorney.

(3) If the parties to a settlement conference agree on stipulations, proposed terms, and conditions for an agreed order to resolve the complaint, they shall forward the agreed order to the board for approval.

(4) If the proposed agreed order is approved by the board, the complaint shall be considered resolved and a hearing shall not be held.

Section 6. Hearings. (1) The president of the board or the duly appointed hearing officer shall:

(a) Preside over all administrative hearings; and

(b) Have the authority to:

1. Rule on all motions;

2. Control the procedure of the hearing; and

3. Admit or exclude testimony or other evidence.

(2) Evidence in support of the complaint shall be presented by the counsel for the board.

(3)(a) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the president of the board or the hearing officer appointed to conduct the hearing.

(4) All hearings before the board shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. Board counsel; and

2. Licensee's counsel or licensee;

(b) Witnesses and evidence in support of the complaint;

(c) Witnesses and evidence on behalf of the licensee;

(d) Closing statements in the following order:

1. Licensee's counsel or licensee; and

2. Board counsel.

(5)(a) Testimony to be considered by the board may be taken by deposition.

(b) A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing:

1. [A showing] Of inability to attend; and

2. That the other party will have an opportunity to cross-examine at the deposition.

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Section 7. Posthearing Proceedings. (1) The board shall deliberate on all cases in closed session.

(2) Board counsel shall not attend, or be involved in any manner with, the closed session.

(3) The specific findings of the board shall be made in open session following the board's deliberation.

Section 8. Penalties. (1) Pursuant to KRS 218A.205(3)(e)1., a licensee convicted of a felony offense related to dispensing a controlled substance shall, at a minimum, be permanently banned from dispensing any controlled substance.

(2) Pursuant to KRS 218A.205(3)(e)2., the board shall impose restrictions short of a permanent ban from dispensing controlled substances on a licensee convicted of a misdemeanor offense relating to the dispensing of a controlled substance.

(3) Pursuant to KRS 218A.205(3)(e)3., a licensee disciplined by the licensing board of another state relating to the improper, inappropriate, or illegal dispensing of a controlled substance shall, at a minimum, have the same disciplinary action imposed in Kentucky as the disciplinary action imposed by the licensing board of the other state.

(4) Pursuant to KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing shall be held on this administrative regulation on Thursday, September 27, 2012 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, October 1, 2012 at 4:30 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the board procedure for investigations and the administrative hearing process.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for investigations and the administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding investigations, hearings, and penalties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the investigation, hearing process and penalties.

(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 establish new procedures for the

complaint, investigation, and penalties.

(b) The necessity of the amendment to this administrative regulation: Requires the board to set procedures for the receiving of complaints, process of investigations, and penalties.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for investigations, complaints and penalties.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will require the board to receive anonymous complaints, follow procedures for investigations, and set penalties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect any licensee, permittee, or certificate holder.

(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: The Board will have to follow procedures for complaints, investigations, and penalties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees, permittees, and certificate holders will know the procedures in the case there is a complaint against them.

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

(a) Initially: No new costs initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any licensee, permittee, or certificate holder.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205, 315.191(1) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)**

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS 315.020, 315.0351, 315.191, 315.300, 315.335

STATUTORY AUTHORITY: KRS 315.020(1), 315.0351, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.020(1) and 315.0351(7) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy. This administrative regulation establishes the requirements relating to a pharmacist-in-charge.

Section 1. Definition[Definitions]. "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky, or in the appropriate jurisdiction of an out-of-state pharmacy holding a Kentucky Board of Pharmacy permit, who accepts responsibility for the operation of a pharmacy in conformance with all laws and administrative regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of the pharmacy.

Section 2. Duties and Responsibilities. (1) The pharmacist-in-charge shall be so designated in the application for a permit to operate a pharmacy and in each application for renewal of that permit thereafter.

(2) A pharmacist shall[may] not serve as a pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he or she is physically present in that pharmacy for a minimum of ten (10) hours per week or the amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Providing notification in writing to the Board of Pharmacy within fourteen (14) calendar days of any change in the:

1. Employment of the pharmacist-in-charge;

2. Employment of staff pharmacists; or[and]

3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations;and

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies; and

(g) Filing of any report of a theft or loss to:

1. The U. S. Department of Justice Drug Enforcement Agency as required by 21 C.F.R. 1301.76(b);

2. The Department of the Kentucky State Police as required by KRS 315.335; and

3. The board by providing a copy to the board of each report submitted.

Section 3. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

(a)"Application for Permit to Operate a Pharmacy in Kentucky", Form 1, 07/2012;[(11/92)]; and

(b) "Application for Non-Resident Pharmacy Permit", Form 1, 07/2012;

(c) "Application for Resident Pharmacy Renewal", Form 2, 07/2012; and

(d) "Application for Non-Resident Pharmacy Permit Renewal", Form 2, 07/2012;[Permit to Operate an Out-of-State Pharmacy (11/92)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street[1024 Capital Center Drive, Suite 210], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday September 27, 2012 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday October 1, 2012 at 4:30 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirement that permit pharmacies place a pharmacist-in-charge as a prerequisite to compounding and dispensing privileges granted by the board.

(b) The necessity of this administrative regulation: This regulation is necessary to require pharmacist-in-charge to file a report of a theft or loss of controlled substance with the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding pharmacist-in-charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the requirements for pharmacist-in-charge for reporting a theft or loss of controlled substances.

(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 will require a pharmacist-in-charge to file a report to the board when there is a theft or loss of controlled substances.

(b) The necessity of the amendment to this administrative regulation: Requires Pharmacist-in-charge to file a report with the board when there is a theft or loss of controlled substances.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements for pharmacist-in-charge.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Board to inves-

tigate any loss of controlled substances in a pharmacy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect all permitted pharmacies that dispense controlled substances.

(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: The Board will have investigate loss of controlled substances in a pharmacy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A pharmacist-in-charge will file a report with the board regarding the loss of controlled substances.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: No cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funds will be required.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacists-in-charge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Optometric Examiners (Amendment)

201 KAR 5:010. Application for licensure; endorsement.

RELATES TO: KRS 218A.205(3)(g), 320.220, 320.250, 320.270

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 320.240(7), 320.270(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.220 requires all persons who practice optometry in this state to be licensed by the Kentucky[Ky.] Board of Optometric Examiners. KRS 320.250 establishes criteria for an applicant to apply for a license. KRS 320.270 grants the board the discretion to admit to practice in Kentucky persons[.Persons] licensed to practice optometry in other states. KRS 218A.205(3)(g) requires fingerprint-supported criminal record checks and queries to the National Practitioner Data Bank on applicants. This administrative regulation prescribes the procedures to be followed in making application to the board for a license.

Section 1. A[Any] person wishing to apply for a license to practice optometry shall submit to the board, within fifteen (15) days of board review, the following items:

- (1) A completed Application for License to Practice Optometry;
- (2)[in addition to a completed application:(1)] Birth certificate;
- (3)[(2)] Certified copy of college transcripts received directly from registrar's office;
- (4)[(3)] Certified copy of optometry school transcripts received directly from registrar's office;
- (5)[(4)] National board results;
- (6)[(5)] Therapeutic Management of Ocular Disease, "TMOD" results;
- (7)[(6)] Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;
- (8)[(7)] Proof of successful completion of State Law Exam results;
- (9)[(8)] A recent photograph of head and shoulders, front view;
- (10)[and
- (9)] A money order or cashier's check payable to the Kentucky State Treasurer in the amount of \$500;
- (11) A money order or cashier's check in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer for the purpose of submitting a query on the applicant to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and
- (12) Prior to approval for examination, an applicant shall submit to a nation-wide criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation.

Section 2. A[Any] person wishing to apply for a license to practice optometry by endorsement shall submit to the board, within fifteen (15) days of board review, the following items:

- (1) A completed Application for License by Endorsement to Practice Optometry;
- (2)[in addition to a completed application:
- (4)] Verification that the applicant has been licensed in optometry and in active practice the past five (5) years;
- (3)[(2)] Information regarding any resolved, pending, or unresolved board action or malpractice suit in any state or territory;
- (4)[(3)] Certified copy of college transcripts received directly from registrar's office;
- (5)[(4)] Certified copy of optometry school transcripts received directly from registrar's office;
- (6)[(5)] Certificate of good standing from the board where the applicant is currently licensed and from all state boards where the applicant has held a license in the past;
- (7)[(6)] Copy of credential that proves the applicant is therapeutically licensed;
- (8)[(7)] Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;

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~~(9) [(9)]~~ Proof of successful completion of Kentucky State Law Exam;

~~(10) [(9)]~~ A recent photograph of head and shoulders, front view;

~~(11) [(40)]~~ A certified check or money order made payable to the Kentucky State Treasurer in the amount of \$700;

~~(12) [and~~

~~(14)]~~ A notarized statement explaining why the applicant wishes to be admitted to practice in Kentucky;

~~(13) A money order or cashier's check in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer for the purpose of submitting a query on the applicant to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and~~

~~(14) Results within sixty (60) days of application, and sent directly to the Board, from a national and state fingerprint-supported criminal record check conducted by the Federal Bureau of Investigation or by the Department of Kentucky State Police.~~

Section 3. (1) A person whose license has been revoked pursuant to KRS 320.280(3)[;] may apply for reinstatement of his or her license.

(2) Except as provided in subsection (3) of this section, a person applying for reinstatement shall submit [furnish the following documentation] to the board:

(a) Evidence of completion of the continuing education requirements established in 201 KAR 5:030;~~[except that an optometrist whose license has been revoked pursuant to KRS 320.280(3) shall obtain the annual continuing education requirement for each year, or any portion of a year, that the license was not renewed up to a maximum of sixty (60) hours;]~~ and

(b) Payment of the annual renewal fee established in 201 KAR 5:090, Section 2.

(3) To apply for reinstatement, an optometrist whose license has been revoked pursuant to KRS 320.280(3) shall submit to the board:

(a) Evidence of completion of the annual continuing education requirement for each year, or any portion of a year, that the license was not renewed up to a maximum of sixty (60) hours; and

(b) Payment of [(e)] the renewal fee off [for an optometrist whose license has been revoked pursuant to KRS 320.280(3), shall be] \$200 for each year, or any portion of a year, that the license was not renewed.

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

(a) "Application for License to Practice Optometry", August 2012[(July 6, 2000 edition)]; and

(b) "Application for License by Endorsement to Practice Optometry", August 2012[(July 6, 2000 edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 2624 Research Park Drive, Suite 305, Lexington, Kentucky 40511, phone (859) 246-2744, Monday through Friday, 8:30 a.m. to 5 p.m.

JERALD COMBS, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2012 at 10:00 a.m. at the Embassy Suites, 1801 Newtown Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on September 21, 2012, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on

October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure criteria for applicants.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 320.220, 320.250, 320.270, and HB1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that require the board to license optometrists and establish criteria for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the criteria for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides for criminal background checks and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services on all applicants.

(b) The necessity of the amendment to this administrative regulation: HB1 expressly requires criminal background checks and a query to the National Practitioner Data Bank of the United States Department of Health and Human Services on all applicants before licensure may be granted. The current regulation does not require a background check and query.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment includes additional scrutiny required by HB1 before licensure may be granted.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the requirements of applicants for licensure, and the Board when considering those applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board expects approximately 40 first time applicants and 7 applicants by endorsement annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All applicants will have to pay to submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services and provide results of a background check to the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The query will cost each applicant \$25 and the background check by the FBI or Kentucky State Police will cost \$36.50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be considered for licensure.

(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 Board to implement the changes because the aforementioned fees will cover the query, and background check.

(b) On a continuing basis: No new costs will be incurred by the Board to implement the changes.

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

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funding for implementation of this administrative regulation will be generated by the fees charged for the query and background check.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional increases in initial or renewal fees will be required to implement the changes made by this regulation, other than those already discussed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a fee to query the National Practitioner Data Bank of the United States Department of Health and Human Services.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all applicants seeking licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact applicants to the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.220, 320.250, 320.270 and HB1 require and authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated from the administrative regulation because the fees charged will cover administrative support and the cost to query.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Optometric Examiners (Amendment)

201 KAR 5:030. Annual courses of study required.

RELATES TO: KRS 218A.205(3)(h), 320.280

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 320.240(7), 320.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(2) requires all licensed optometrists to annually take courses of study in subjects relating to the practice of optometry. KRS 218A.205(3)(h) requires optometrists to obtain seven and one-half (7.5) percent of their continuing education credits in the use of the electronic monitoring system established pursuant to KRS 218A.202, pain management, or addiction disorders. This administrative regulation establishes the required hours of study and prescribes the approved programs and those records which

shall be maintained and submitted showing proof of attendance at those programs.

Section 1. (1) The annual course of study shall be completed each calendar year.

(2)(a) A licensee shall attend a minimum of eight (8) continuing education credit hours.

(b) In addition to the requirements of paragraph (a) of this subsection, an optometrist[,] who is authorized to prescribe therapeutic agents[,] shall attend a minimum of seven (7) credit hours in ocular therapy and pharmacology, for a total of at least fifteen (15) continuing education credits.

(c) In addition to the requirements of paragraph (a) and (b) of this subsection, an optometrist who is credentialed by the board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of at least twenty (20) continuing education credits.

(d) A licensee who is authorized to prescribe controlled substances shall obtain two (2) credit hours that relate to the use of the electronic monitoring system established in accordance with KRS 218A.202 known as Kentucky All Schedule Prescription Electronic Reporting (KASPER), pain management, or addiction disorders as part of the licensee's total continuing education credits.

Section 2. In order to be approved, an educational course shall be sponsored by a recognized and established state, regional (multistate) or national optometric association, an accredited college of optometry, or an accredited college of medicine.

Section 3. (1) In order to be credited for an educational course, a licensee shall submit an attendance form to the board.

(2) The attendance form shall be submitted on or before December 31 of each calendar year.

Section 4. A sponsor of an approved educational course shall ~~meet the following requirements:~~

~~(1) He shall~~ furnish an attendance form to a licensee.;

~~(2) The attendance form shall contain the following information:~~

~~(1) [(a)] Name of the sponsoring organization;~~

~~(2) [(b)] Name and address of the licensee;~~

~~(3) [(c)] Educational topics addressed at the course;~~

~~(4) [(d)] Identity of the speakers;~~

~~(5) [(e)] Number of hours attended by the licensee;~~

~~(6) [(f)] Date of the program;~~

~~(7) [(g)] Statement by the licensee that he or she has attended the course; and~~

~~(8) [(h)] Signature of an official of the sponsoring organization.~~

Section 5. Credit shall not be given for more than two (2) hours attendance in a course of office management and administration.

Section 6. (1) Except as provided in subsection (2) of this section, credit may be granted for a maximum of five (5) [two (2)] hours continuing education through the Internet.

(2) The credit hours required by Section 1(2)(c) of this administrative regulation shall not be obtained through the Internet.

Section 7. Within one (1) year of initial licensure and thereafter every decennial year, an optometrist shall successfully complete a continuing education course of not less than one (1) hour concerning HIV/AIDS that complies with KRS 214.610(1) and is approved by the Cabinet for Health and Family Services, HIV/AIDS Branch.

JERALD COMBS, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2012 at 10:00 a.m. at the Embassy Suites, 1801 Newtown Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on September 21, 2012, five workdays prior to this hearing, of

their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the mandates of KRS 320.280, which requires optometrists to obtain continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes criteria for mandated continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation qualifies how many hours and what subject matter must be completed by optometrists.

(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 require optometrists who prescribe controlled substances to obtain two hours of continuing education in the use of KASPER, pain management, or addiction disorders. The amendment also clarifies the requirements for expanded therapeutic procedures and a maximum of five continuing education hours that may be acquired through the internet.

(b) The necessity of the amendment to this administrative regulation: HB1 requires a licensee to obtain a certain percentage of total continuing education in the use of KASPER, pain management, or addiction disorders.

(c) How the amendment conforms to the content of the authorizing statutes: HB1 requires a certain percentage of total continuing education hours to be in the use of KASPER, pain management, or addiction disorders. The amendment reduces the statutory mandate to a prescribed number of hours.

(d) How the amendment will assist in the effective administration of the statutes: Licensees will be clearly advised about the number of hours and subject matter of continuing education required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 415 optometrists are currently authorized to prescribe controlled substances and will need obtain two hours of continuing education in the use of KASPER, pain management, or addiction disorders;

(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: Optometrists have to receive eight hours of continuing education; an optometrist prescribing therapeutic agents must obtain fifteen hours of continuing education; an optometrist credentialed by the Board to perform expanded therapeutic procedures shall obtain twenty hours of continuing education. Optometrists prescribing controlled substances must have two hours of particularized education as part of their total continuing education hours.

(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 additional monetary cost to the entities identified in question (3) because the amendment does not require an addition to the continuing education normally obtained.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater education.

(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 Board.

(b) On a continuing basis: No new costs will be incurred by the Board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Primarily, license application and renewal fees fund the work of the Board. The Board is self sustaining and receives no general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this regulation is not dependent on an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees who are authorized to prescribe controlled substances.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.280 and HB1 require the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Dentistry (Amendment)

201 KAR 8:520. Fees and fines.

RELATES TO: KRS 313.022, 313.030, 313.100(2)(c), 2012 Extra. Sess. Ky. Acts ch. 1

VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012

STATUTORY AUTHORITY: KRS 313.022(1), 2012 Extra. Sess. Ky. Acts ch. 1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

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

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

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

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

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

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

Section 4. General Fines. (1) Fines may be agreed to by settlement agreement or as listed in this section.

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

(3) If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be \$200 per hour deficient not to exceed \$5,000.

(4) The fine for failure of a follow-up infection control inspection shall be \$500.

(5) The fine for failure of a follow-up anesthesia and sedation facility inspection, performed no sooner than thirty (30) days following an initial failed inspection, shall be \$1,500.

(6) The fine for a licensee who is disciplined in another state or territory who holds a Kentucky license and fails to notify the board in writing of the disciplinary action within thirty (30) days of the finalization of the action shall be subject to not less than a \$1000 fine.

(7) A licensee who fails to register for an account with the Kentucky All Schedule Prescription Electronic Reporting System or who fails to meet the requirements of 201 KAR 8:540, Section 4, shall receive a private admonishment from the board and be given no more than thirty (30) days to become compliant after which time the dentist shall be subject to no less than a \$500 fine.

Section 5. All fines and fees paid to the board are nonrefundable.

DR. ADAM K RICH, DMD, Board President

APPROVED BY AGENCY: July 24, 2012

FILED WITH LRC: July 25, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 25, 2012, at 9:00 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than September 18, 2012, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: David J. Beyer, Interim Executive Director and General Counsel, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. phone (502) 429-7280, fax (502) 429-7282, email David.Beyer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David J. Beyer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees, charges, and fines for the is-

suance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions, which is mandated by KRS 313

(b) The necessity of this administrative regulation: KRS 313 requires the board to promulgate administrative regulations to establish fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 313 requires the board to establish fees and fines that do not exceed the national average, which is what this administrative regulation does.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment will add fines for individuals failing to meet the mandates for 2012 Kentucky Acts Ch. 1.

(b) The necessity of the amendment to this administrative regulation: The amendment adds an enforcement and penalty section to the regulation for the implementation of 2012 Kentucky Acts Ch. 1.

(c) How the amendment conforms to the content of the authorizing statute: The Board has the authority under KRS 313 to fine dentist who fail to meet the standards set by the Kentucky Board of Dentistry.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will give the Law Enforcement committee a starting base to insure the implementation of 2012 Kentucky Acts Ch. 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any individual licensed or registered by the board. To date there are approximately 3119 currently licensed dentists and approximately 125 new applicants per year as well as 2402 dental hygienist currently licensed by the board and approximately 100 new applicants per year.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will cost licensees the amount specified in this administrative regulation.

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

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

(a) Initially: No additional costs are expected.

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation both establishes fees and makes adjust-

ments to the board's current fee structure without exceeding national or regional averages as directed by 2010 Ky. Acts ch. 85.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

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

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in HB1 of the 2010 Extraordinary Session of the General Assembly.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Dentistry (Amendment)

201 KAR 8:532. Licensure of dentists.

RELATES TO: KRS 39A.350 - 366, 214.615, 304.040 - 075, 313.010(9), 313.030, 313.035, 313.080, 313.130, 313.245, 2012 Extra. Sess. Ky. Acts ch. 1

STATUTORY AUTHORITY: KRS 214.615(2), 313.020(2), 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254, 2012 Extra. Sess. Ky. Acts ch. 1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 and 2012 Extra. Sess. Ky. Acts ch. 1 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

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

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

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

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

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

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

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

(8) Submit to a nation-wide criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police~~[from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint];~~

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

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

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

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

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

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

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

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

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

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

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

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

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

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

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

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

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

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

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

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

and

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

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

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

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into a program and the expected date of completion;

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

(d) Submit an official final transcript of the applicant's dental coursework with degree posted.

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

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

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

(5) Nothing in this section shall prohibit:

(a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;

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

(c) A volunteer health practitioner from providing services under KRS 39A.350-366.

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

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

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

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

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

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

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

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

Section 6. Requirements for Licensure of Foreign Trained Dentists. (1) Each individual desiring licensure as a dentist who is

a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

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

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

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

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

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

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

(h) Submit to a criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police~~from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint~~;

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

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

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

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

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

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

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

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

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

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

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

(b) Submit a completed, signed, and notarized Application for Charitable Dental Licensure with an attached applicant photo taken within the past six (6) months;

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

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

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

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.010(9) which shall be completed within the duration of the charitable event;

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

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

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

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

(g) A dentist licensed under this section shall not be allowed to prescribe any medications while practicing in the Commonwealth.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010 shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

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

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

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

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

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

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

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

(c) Competence to diagnose oral pathology;

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

(e) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

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

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

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

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

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

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

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

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

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

- (b) The name of the licensee in attendance;
- (c) The title of the course or meeting attended or completed;
- (d) The date of attendance or completion;
- (e) The number of hours earned; and
- (f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

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

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

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

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

(a) Submit a completed and signed, signed, and notarized Application for Renewal of Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

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

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

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

(e) Obtain at least one and one-half (1.5) hours of continuing education in the use of the Kentucky All Schedule Prescription Electronic Reporting System, pain management, or addiction disorders per year or a total of three (3) hours in a two (2) year renewal cycle; and

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

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

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

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

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

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

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

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

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

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

(a) Submit a completed, signed, and notarized Application to Reinstatement a Dental License with an attached applicant photo taken within the past six (6) months;

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

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any licensee to

practice dentistry held previously or currently in any state or jurisdiction;

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

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

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a licensee is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a licensee is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

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

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

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

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Dental Licensure", January 2011;
- (b) "Statement Regarding Student Licensure Limitations", July 2010;
- (c) "Statement Regarding Faculty Licensure Limitations", July 2010;
- (d) "Application for Charitable Dental Licensure," July 2010;
- (e) "Application for Specialty Licensure", July 2010;
- (f) "Application for Renewal of Dental Licensure", January 2011;
- (g) "Retirement of License Form", July 2010;
- (h) "Application to Reinstatement a Dental License", July 2010;
- (i) "Verification of Licensure or Registration Form", July 2010;
- (j) "Duplicate License or Registration Form", July 2010; and
- (k) "American Heart Association CPR Guidelines", 2010.

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

DR. ADAM K RICH, DMD, Board President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 25, 2012, at 9:00 a.m. at the office of the

Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the emergency 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 emergency administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the emergency administrative regulation to the contact person.

CONTACT PERSON: David J. Beyer, Interim Executive Director and General Counsel, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David J. Beyer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for the licensure of dentists as mandated by KRS 313.035 and 2012 Kentucky Acts Ch. 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 313.035 and 2012 Kentucky Acts Ch. 1, which requires the board to promulgate administrative regulations regarding the licensure of dentists.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary about the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by KRS 313.035 and 2012 Kentucky Acts Ch. 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the procedure for the licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses and renewal programs as required by KRS 313.035 and 2012 Kentucky Acts Ch. 1.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow for compliance with the requirements for 2012 Kentucky Acts Ch. 1.

(b) The necessity of the amendment to this administrative regulation: To insure the board and the profession meet the mandates of 2012 Kentucky Acts Ch. 1.

(c) How the amendment conforms to the content of the authorizing statute: The amendment sets the standard of a nationwide criminal background check buy either the Federal Bureau of Investigation of the Department of the Kentucky State Police.

(d) How the amendment will assist in the effective administration of the statutes: The amendment sets the standard of a nationwide criminal background check buy either the Federal Bureau of Investigation of the Department of the Kentucky State Police.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 3119 currently licensed dentists and approximately 125 new applicants per year. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions for licensees to take in order to comply with this administrative regulation. The Kentucky Board of Dentistry is charged by KRS 313.035 to regulate the practice of dentistry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

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

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self-funded agency and the requirements of this regulation will be absorbed into the agency's general budget from the 2012 regulatory session of the Kentucky General Assembly

(a) Initially: No additional costs are expected.

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

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

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

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

(9) TIERING: Is tiering applied? This administrative regulation applies tiering by identifying each classification of licensure available to dentists in the Commonwealth of Kentucky. General dental licenses are the standard, full license type available, and applicants are therefore subject to the full complement of requirements. Reporting requirements are reduced for student, faculty, and charitable limited license applicants as they are subject to restrictions of practice. Specialty license holders are subject to additional reporting requirements as they hold a more advanced license than general dentists.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Dentistry is the only state government entity which will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313 and 2012 Kentucky Acts Ch. 1

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal effect on the Kentucky Board of Dentistry as the agency is a fully self-funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in 2012 Kentucky Acts Ch. 1 of the 2012 Extraordinary Session of the General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meet its budgetary obligations as set forth in 2012 Kentucky Acts Ch. 1 of the 2012 Extraordinary Session of the General

Assembly.

(c) How much will it cost to administer this program for the first year? There will be no new cost for the agency.

(d) How much will it cost to administer this program for subsequent years? All cost related to this program will be absorbed in the agency's general budget.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Dentistry
(Amendment)**

201 KAR 8:540. Dental practices and prescription writing.

RELATES TO: KRS 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note, 2012 Extra. Sess. Ky. Acts ch. 1

STATUTORY AUTHORITY: KRS 313.060(1), 2012 Extra. Sess. Ky. Acts ch. 1

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures, and KRS 313.060(1) requires the board to promulgate administrative regulations relating to dental practices that shall include minimal requirements for documentation and Centers for Disease Control compliance. This administrative regulation establishes requirements for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures and includes minimal requirements for documentation and Centers for Disease Control compliance.

Section 1. Definitions[Definition]. (1) "Invasive procedure" means a procedure that penetrates hard or soft tissue.

(2) "Oral surgery" means any manipulation or cutting of hard or soft tissues of the oral or maxillofacial area and associated procedures, by any means, as defined by the American Dental Association, utilized by a dentist licensed by this chapter and within their scope of training and practice.

Section 2. Minimum Documentation Standards for all Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth (18) birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) The dentist shall keep accurate, readily accessible, and complete records which include:[Each patient record for a dental patient in the Commonwealth of Kentucky shall include at a minimum:]

(a) The patient's name;

(b) The patient's date of birth;

(c) The patient's medical history and documentation of the physical exam of the oral and perioral tissues;

(d) The date of treatment;

(e) The tooth number, surfaces, or areas to be treated;

(f) The material used in treatment;

(g) Local or general anesthetic used, the type, and the amount;

(h) Sleep or sedation dentistry medications used, the type, and the amount; [and]

(i) Diagnostic, therapeutic, and laboratory results if any;

(j) The findings and recommendations of and evaluations and consultations if any;

(k) Treatment objectives;

(l) All medications, including date, type, dosage, and quantity prescribed or dispensed; and

(m) Any post treatment instructions.[A complete list of prescriptions provided to the patient, the amount given, and the number of refills indicated.]

Section 3. Prescription Writing Privileges. (1) Pursuant to KRS 313.035 a dentist licensed under this chapter may prescribe any drug necessary within the scope of their practice with the following conditions, provided the dentist:

(a) Is licensed pursuant to 201 KAR 8:532;

(b) Has obtained a license from the Drug Enforcement Administration;

(c) Has enrolled with and utilizes the Kentucky All-Scheduled Prescription Electronic Reporting System as required by 2012 Extra. Sess. Ky. Acts ch. 1 and Section 2(4)(b) of this administrative regulation.

(2) A dentist may not compound any scheduled drugs or dispense any Schedule I, Schedule II, or Schedule III controlled substances containing hydrocodone for use by the patient outside the office setting.

Section 4. Prescribing of Controlled Substances by Dentist. (1) Prior to the initial prescribing of any controlled substance, each dentist shall:

(a) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record and consider the available information to determine whether it is medically appropriate and safe to prescribe a controlled substance. This requirement to obtain and review a KASPER report shall not apply to:

1. A dentist who prescribes a Schedule III or one (1) of the Schedule IV controlled substances listed in subparagraph 2. of this paragraph after the performance of oral surgery provided no more than a seventy-two (72) hour supply of such controlled substance is prescribed;

2. A dentist prescribing or dispensing Schedule IV or V controlled substances other than those listed in this specific subparagraph. The dentist shall obtain and review a KASPER report before initially prescribing any of the following Schedule IV controlled substances:

a. Ambien;

b. Anorexics;

c. Ativan;

d. Klonopin;

e. Librium;

f. Nubain;

g. Oxazepam;

h. Phentermine;

i. Soma;

j. Stadol;

k. Stadol NS;

l. Tramadol;

m. Versed; and

n. Xanax; or

3. Pre-appointment medication for the treatment of procedure anxiety provided the prescription is limited to a two (2) day supply and has no refills;

(b) Obtain a complete medical history and conduct a physical examination of the oral or maxillofacial area of the patient and document the information in the patient's medical record;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(e) Obtain written consent for the treatment.

(2) A dentist may provide one (1) refill within thirty (30) days of the initial prescription for the same controlled substance for the

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same amount or less or prescribe a lower schedule drug for the same amount without a clinical reevaluation of the patient by the dentist.

(3) A patient who requires additional prescriptions for a controlled substance shall be clinically reevaluated by the dentist and the all provisions of this section followed.

Section 5. Penalties and Investigations. (1) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee convicted of a felony offense related to prescribing and dispensing of a controlled substance shall, at a minimum, have a life-time revocation of any and all scheduled drug prescribing privileges.

(2) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee convicted of a misdemeanor offense relating to the prescribing of a controlled substance shall, at a minimum, have a five (5) year revocation of any and all scheduled drug prescribing privileges.

(3) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee disciplined by a licensing board of another state relating to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall, at a minimum, have the same disciplinary action imposed by this state or the disciplinary action prescribed in subsection (1) or (2) of this section, whichever is greater.

(4) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee who is disciplined in another state or territory who holds a Kentucky license and fails to notify the board in writing of the disciplinary action within thirty (30) days of the finalization of the action shall be subject to not less than a \$1000 fine.

(5) Pursuant to the provisions in 2012 Extra. Sess. Ky. Acts ch. 1 and the procedures set forth in KRS Chapter 313, a licensee who fails to register for an account with the Kentucky All Scheduled Prescription Electronic Reporting System or who fails to meet the requirements of Section 4 of this administrative regulation shall receive a private admonishment from the board and be given no more than thirty (30) days to become compliant after which time the dentist shall be subject to no less than a \$500 fine.

(6) The Law Enforcement Committee of the Board shall produce a charging decision on the complaint within 120 days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 6[3]. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the standard[universal] precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same standard[universal] precautions.

(2) The board or its designee shall perform an infection control inspection of a dental practice utilizing the Infection Control Inspection Checklist.

(3) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board. The dentist may receive a second inspection after the thirty (30) days have passed. If the dentist fails the second inspection he or she shall be immediately temporarily suspended pursuant to KRS 313.085 until proof of compliance is provided to the board and he or she shall pay the fine as prescribed in 201 KAR 8:520.

(4) Any licensed dentist, licensed dental hygienist, registered dental assistant, or dental assistant in training for registration who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or designee shall convene a confidential expert review panel to offer counsel regarding under what circum-

stances, if any, the individual may continue to perform invasive procedures.

Section 7[4]. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

(1) Provide written notice to the patient of the termination;

(2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and

(3) Retain a copy of the letter of termination in the patient records.

Section 8[5]. Incorporation[Incorporated] by Reference. (1) The following material is incorporated by reference:

(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and

(b) "Infection Control Inspection Checklist", July 2010.

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

DR. ADAM K RICH DMD, Board President

APPROVED BY AGENCY: July 24, 2012

FILED WITH LRC: July 25, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 25, 2012, at 9:00 a.m. at the office of the Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing no later than September 18, 2012, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: David J. Beyer, Interim Executive Director and General Counsel, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. phone (502) 429-7280, fax (502) 429-7282, email David.Beyer@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David J. Beyer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures dentist as related to documentation of patient records, the writing of prescriptions, penalties for violations, infection control, and termination of the doctor patient relationship as required by KRS 313 and 2012 Ky Acts Ch. 1 of the 2012 Special Session

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2012 Ky. Acts Ch. 1, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, the writing of prescriptions, penalties for violations, infection control, and other parts of the dental practice.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is necessary to implement 2012 Ky. Acts Ch. 1, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, the writing of prescriptions, penalties for violations, infection control, and other parts of the dental practice.

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

trative regulation is necessary to implement 2012 Ky. Acts Ch.1, which requires the board to promulgate administrative regulations regarding the requirements for documentation in a patient record, the writing of prescriptions, penalties for violations, infection control, and other parts of the dental practice.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the board into compliance with the requirements with 2012 Kentucky Acts Ch. 1.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the board into compliance with the requirements with 2012 Kentucky Acts Ch. 1.

(c) How the amendment conforms to the content of the authorizing statute: The amendment brings the board into compliance with the requirements of 2012 Kentucky Acts Ch. 1.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the necessary requirements for prescription writing as mandated by 2012 Kentucky Acts Ch. 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 3,119 dentist currently licensed by the board as well as any new dentist licensed by the board in the future. Additionally, the Kentucky Board of Dentistry will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation places into effect the provisions of 2012 Kentucky Acts Ch.1 which requires all licensed dentist who prescribe controlled substances to register with the KASPER program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees who do not currently operate a computer in their office setting will have to purchase a computer system to effectively run and document their participation in the KASPER program.

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

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board is a self-funded agency whose budget was approved in regular session of the 2012 General Assembly.

(a) Initially: No additional costs are expected.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313 and 2012 Ky Acts Ch. 1

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no new net fiscal affect on the Kentucky Board of Dentistry as the agency is a fully self funded agency and receives no general fund dollars.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in 2012 Kentucky ACTS CH. 1.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Compliance with this regulation will provide the agency with enough money to meets its budgetary obligations as set forth in 2012 Kentucky ACTS CH. 1.

(c) How much will it cost to administer this program for the first year? The cost of this program is allocated within the monies of the agency as allotted in the budget bill passes in the regular session of the Kentucky General Assembly for 2012.

(d) How much will it cost to administer this program for subsequent years? The continued administration will be absorbed into the self-supported budget of the Board of Dentistry.

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 Medical Licensure (Amendment)

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: 218A.205, KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate regulations to regulate the conduct of licensees. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses[empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the administrative regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto]. The purpose of this administrative regulation is to set forth the procedures to be followed in handling formal and informal disciplinary proceedings before the board [or before any committee to the board], such that the proceedings will be conducted with due regard for the rights and privileges of all affected parties.

Section 1. Definitions. (1) "Executive director" means the executive director of the board or any assistant executive directors appointed by the board.

(2) "General counsel" means the general counsel of the board or any assistant general counsel appointed by the board.

(3) "Board" means the Kentucky Board of Medical Licensure or its inquiry or hearing panels.

(4) "Grievance" means any allegation in whatever form alleging misconduct by a physician.

(5) "Charge" means a specific allegation contained in any document issued by the board or its inquiry or hearing panels alleging a violation of a specified provision of the Kentucky Medical and

Osteopathic Practice Act.

(6) "Complaint" means a formal administrative pleading authorized by the inquiry panel that sets forth charges against a physician and commences a formal disciplinary proceeding.

(7) "Show cause order" means an order directing the named physician to show cause why the board should or should not take a specified action based on specified information which the order alleges to be true.

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

(10) "Act" means the Kentucky Medical and Osteopathic Practice Act.

Section 2. Reception of Grievances; Investigations. (1) Grievances may be submitted by any individual, organization or entity. The board shall retain a written form upon which grievances may be made and any party submitting a grievance may be required to complete the form and required to include the party's name and address unless the grievance is submitted anonymously. Board members or employees may initiate a grievance simply by providing a written memorandum to the executive director. If the board receives an anonymous grievance, an investigation will only be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious. [and may also be required to give their affidavit acknowledging the truth and veracity to the best of their knowledge and belief of the information contained in the grievance.]

(2) The board shall initiate each investigation pertaining to prescribing or dispensing of controlled substances within seventy-two (72) hours of the date of receipt of the grievance. All grievances shall be investigated as necessary and as promptly as possible, and presented to the inquiry panel for review. Investigations pertaining to prescribing or dispensing of controlled substances shall be presented to the inquiry panel within 120 days of the date of receipt of the grievance unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel. The executive director may hold an investigation pertaining to prescribing or dispensing of controlled substances in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency. In each instance when an investigation pertaining to prescribing or dispensing of controlled substances is not presented to the inquiry panel within 120 days of the date of receipt of the grievance, the investigative report will plainly state the circumstances of that particular grievance or investigation that made timely presentation to the inquiry panel impossible. The inquiry panel and executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations. The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter. The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the inquiry panel when requested shall be considered unprofessional conduct in violation of KRS 311.595(9).

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605-311.606 and may pursue investigations, on its own initiative, in regard to acts of noncompliance or any other perceived violation of the Act.

Section 3. Reports and Recommendations; Petitions. (1) When in the opinion of the inquiry panel a grievance warrants the issuance of a complaint against a physician, the inquiry panel shall cause a complaint to be prepared.

(2) When in the opinion of the executive director a grievance warrants the issuance of a complaint against a physician and cir-

cumstances do not allow the timely presentation of the grievance to the inquiry panel, the executive director shall cause a complaint to be prepared.

(3) When in the opinion of the executive director or the inquiry panel a disciplinary matter warrants the issuance of a show cause order against a physician, the executive director or the inquiry panel shall cause a proposed order to be prepared.

(4) The board, on its own initiative, may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining, or reobtaining licensure.

(5) Nothing in this subsection shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.

Section 4. Complaints. (1) The complaint shall be signed and dated. The complaint shall be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and shall be designated with an appropriate case number.

(2) The complaint shall set forth the board's jurisdiction in regard to the subject matter of the complaint and shall further set forth, in numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 5. Show Cause Orders. (1) The show cause order shall be signed by an officer of the board and shall be dated. The show cause order shall be styled in regard to the license, application for license or application for renewal, registration or reregistration of license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and shall be designated with an appropriate order number.

(2) The show cause order shall set forth the board's jurisdiction in regard to the subject matter of the order and shall further set forth, in numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license.

(3) The show cause order shall direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint the inquiry panel shall issue an order directing the charged physician to respond within thirty (30) days after receiving notice of the complaint, and informing the physician that failure to respond may be taken by the board as an admission of the charges. ~~[Section 7. Orders of Temporary Restriction. An order temporarily suspending, limiting or restricting the license held by the named physician shall set forth the grounds which the inquiry panel believes support a finding that sufficient reasonable cause exists to believe that the continued unaffected practice by the named physician would constitute a danger to the health, welfare and safety of the physician's patients or of the general public.]~~

Section ~~7~~ 8. Notice and Service of Process. (1) Any notice required by the Act or this administrative regulation shall be in writing, dated and signed by the appropriate person.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail to the physician's last known address of which the board has record or by such service on the named physician's attorney of record. Failure of the named physician to receive actual notice after execution of the prescribed service shall not prejudice the board from pursuing proceedings that result in the denial or discipline of the named physician's license. ~~[Section 9. Hearings Pursuant to Order Temporarily Suspending, Limiting or Restricting a License. (1) A physician whose license has been temporarily suspended, limited or restricted shall, upon written request, be accorded hearing on the board's order.~~

~~(2) Any findings of fact or conclusions of law rendered by the hearing officer pursuant to a hearing on an order of temporary discipline shall not be binding upon the hearing panel in its ultimate determination regarding the charges contained in the complaint, nor shall the hearing officer thereafter be prejudiced from presiding~~

at the hearing on the complaint.

~~(3) At the hearing on the order of temporary discipline, the hearing officer may entertain any motion timely submitted in regard to any matter concerning the disciplinary case, provided, however, that any orders issued pursuant to such motions shall not be considered appealable.~~

~~(4) Either party to the hearing on the order of temporary discipline may petition the hearing panel to review the order of the hearing officer either sustaining, modifying or withdrawing the inquiry panel's order by filing a written petition delineating those aspects of the hearing officer's determination with which the party takes exception and requesting the hearing panel to review the hearing officer's determination. The hearing panel may grant or deny review in its discretion.~~

~~(5) Nothing in this section shall be construed to limit either party's right to appeal an order sustaining, modifying or withdrawing an order of temporary discipline to the circuit court of the county in which the board's offices are located as provided by statute. However, the filing of an appeal shall not prejudice the board's jurisdiction to continue the proceeding in regard to the charges contained in the complaint.]~~

Section 8.[40.] Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer who is empowered to preside at any and all proceedings, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law and to perform any other act necessary to the proper conduct of the proceedings.

(2) Appointment of the prosecuting attorney. The board's general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, provided, however, that the board may appoint special prosecuting attorneys in its discretion. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline.

(4) Form of pleadings; service. Pleadings may be in any neat form provided that all pleadings must be dated and signed by the offering party. The original of all pleadings must be filed with the executive director for entry into the official record and copies must be served on the hearing officer, the opposing party and any other person who might be designated by the hearing officer.

(5) Prehearing conferences. Upon motion of either party or upon his or her own initiative, the hearing officer may order that a prehearing conference be held. The prehearing conference may be the forum for consideration of any matter properly before the hearing officer including all motions, discovery, stipulations, identification of issues, dates of future proceedings and objections.

(6) Discovery. Either party may at any time after the issuance of a complaint or show cause order move the hearing officer to order that discovery from the other party be allowed by any of the following methods:

(a) Oral deposition, provided, however, that either party shall have the right to move the hearing officer to order that the deposition be entered into the record in lieu of further testimony by the witness;

(b) Request for a more definite statement;

(c) Request for production of names of witnesses, documents and other demonstrative evidence; and

(d) Request for a brief synopsis of the testimony expected to be given by any expert witness.

The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

(7) Hearings. Hearings shall proceed in accordance with the rules of examination applicable in courts of law in the Commonwealth. The rules of evidence applicable in courts of law in the Commonwealth shall apply, provided, however, that hearsay evidence shall be admissible unless irrelevant or grossly prejudicial. The order and burden of proof shall be established by the hearing

officer, provided, however, that the burden of proof shall be upon the charged physician in any hearing on the charges contained in a show cause order. The hearing officer shall rule upon any motions or objections and may require the submission of briefs in regard to any issue. The hearing officer may allow opening and closing statements by either party, or other offers of prosecution or defense that will allow the orderly and expeditious conduct of the proceedings.

(8) Record. The hearing officer shall be charged with the responsibility of compiling a written record of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings and other legal documents which the hearing officer deems properly part of the record.

(9) Presentation of record, hearing officer's proposed findings, conclusions and recommendations. The hearing officer shall present the record, his or her proposed findings of fact, conclusions of law and recommendations to the executive director for deliberation by the hearing panel. The hearing officer shall serve a copy of his findings, conclusions and recommendations on all parties at least twenty (20) days prior to the date set for the hearing panel's final determination. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions and recommendations ten (10) days prior to the date set for the hearing panel's final determination.

(10) Briefs. Any party to the proceeding may move the hearing officer to allow briefs to be filed with the hearing panel prior to the hearing panel's final determination. The hearing officer may grant the motion and establish a briefing schedule but only if the hearing officer believes that such a procedure would substantially aid the hearing panel in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise allowed by the hearing officer. The hearing panel may, on its own initiative, order that briefs be submitted.

(11) Oral argument. Any party to the proceeding may move the hearing panel to allow oral argument prior to the hearing panel's final determination. The hearing panel may order oral arguments on its own initiative.

(12) Board's findings of fact, conclusions of law and final order, remand. At the conclusion of its deliberations the hearing panel may adopt the hearing officer's proposed findings, conclusions and recommendations of action in whole or in part or may reject them totally and prepare its own. The hearing panel shall enter a final order dated and signed by an officer of the hearing panel stating its ultimate determination. Prior to, during or subsequent to any deliberations the hearing panel may remand the matter to the hearing officer for further proceedings as directed.

Section 9. Meetings of the Board and Panels. (1) The full membership of the Board shall meet quarterly each calendar year, in the months of March, June, September, and December. At such meetings, the board will make licensing decisions regarding initial applications for licensure, make decisions regarding recommendations made by its various statutory committees, determine whether to enter into contractual relationships, and address issues of general policy or interpretation of statute.

(2) The members of Inquiry Panel A shall meet bimonthly each calendar year, in the months of February, April, June, August, October, and December. At its February, April, August, and October meetings, Inquiry Panel A will finally resolve cases in which a hearing has been conducted or a negotiated settlement tendered, will determine whether to grant requests to modify or terminate previously accepted negotiated settlements, will determine appropriate action upon recently completed investigations, and will make licensing decisions regarding renewal applications. At its June and December meetings, which coincide with the meeting of the full Board, Inquiry Panel A will take appropriate action upon recently completed investigations of prescribing or dispensing of controlled substances and other matters that require immediate attention.

(3) The members of Inquiry Panel B shall meet bimonthly each calendar year, in the months of January, March, May, July, September, and November. At its January, May, July, and November meetings, Inquiry Panel B will finally resolve cases in which a hearing has been conducted or a negotiated settlement tendered, will determine whether to grant requests to modify or terminate pre-

viously accepted negotiated settlements, will determine appropriate action upon recently completed investigations, and will make licensing decisions regarding renewal applications. At its March and September meetings, which coincide with the meeting of the full board, Inquiry Panel B will take appropriate action upon recently completed investigations of prescribing or dispensing of controlled substances and other matters that require immediate attention.

Section 10. Definitions. "A conviction relating to controlled substances" shall include any conviction or plea to criminal charges, regardless of adjudication, that is based upon or resulted from, in whole or part, allegations of conduct involving the improper, inappropriate or illegal use, possession, transfer, prescribing or dispensing of controlled substances. The underlying facts of the offense, rather than the title of the offense named in the plea or judgment of conviction, will be determinative of whether the conviction or plea was "relating to controlled substances".

Section 11. Mandatory Reporting; Mandatory Disciplinary Sanctions; Emergency Action; Expedited Proceedings. (1)(a) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon their initial application any criminal conviction they have sustained or any plea of guilt, plea of nolo contendere or Alford plea they have entered to criminal charges in any state, regardless of adjudication.

(b) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon their initial application any disciplinary action taken or sanction imposed upon their license to practice medicine or osteopathy in any state, to include surrendering or placing their license in an inactive or retirement status to resolve a pending investigation by the licensing authority.

(c) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon their initial application if they are currently under investigation by the licensing authority of any other state for possible violations of the licensing or regulatory statutes of that state.

(d) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting, the licensee shall provide a copy of the judgment of conviction or plea documents.

(e) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board within ten (10) days of receipt, notice of any disciplinary action taken or sanction imposed upon their license in any state, including surrendering their license or placing their license into inactive or retired status to resolve a pending licensing investigation. As part of this reporting requirement, the licensee shall provide a copy of the order issued by or entered into with the other licensing board.

(f) Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a) through (c) of this section, shall constitute a violation of KRS 311.595(9) and (12). Upon a finding by the board that the applicant committed such violation, the appropriate panel shall impose a fine of \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this administrative regulation. In addition to these minimum mandatory sanctions, the panel may impose any additional sanction authorized by KRS 311.595, including denial of the application or revocation of the license previously issued based upon the incomplete information.

(g) Failure to report a criminal conviction or plea, or action taken by another licensing board as required of a licensee by paragraphs (d) and (e) of this subsection, shall constitute a violation of KRS 311.595(9) and (12). Upon a finding by the board that the licensee committed such violation, the appropriate panel shall impose a fine of \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this administrative regulation. In addition to these minimum mandatory sanctions, the panel may impose any additional sanction authorized by KRS 311.595 based upon all of the information available to the Panel at the time of action.

(2)(a) If an initial applicant reports that they are the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that initial application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

(b) If an initial applicant has been convicted of a felony offense or entered a plea of guilt, an Alford plea or a plea of nolo contendere to any felony charge relating to controlled substances, regardless of adjudication, in any state, the board may exercise its normal discretion to grant or deny the application, based upon all available facts. If the board should grant a license to such an initial applicant, the board shall, at a minimum, permanently ban the applicant from prescribing or dispensing controlled substances as an express condition of granting the license. If the board grants the license subject to a permanent ban, it may impose other conditions in addition to that permanent ban as express conditions of granting the license.

(c) If a licensee has been convicted of or entered a plea of guilt, an Alford plea or a plea of nolo contendere to any felony offense relating to controlled substances, regardless of adjudication in any state, the appropriate panel shall, at a minimum, permanently ban the licensee from prescribing or dispensing controlled substances as a disciplinary sanction. In addition to this minimum sanction, the panel may take any appropriate disciplinary action authorized by KRS 311.595 against the license, or in lieu of the minimum sanction, the panel may revoke the license, based upon the facts available to the panel at the time of action.

(3)(a) If an initial applicant has been convicted of a misdemeanor offense relating to controlled substances or entered a plea of guilt, an Alford plea or plea of nolo contendere to a misdemeanor charge relating to controlled substances, regardless of adjudication, in any state, the board may exercise its normal discretion to grant or deny the application, based upon all available information. If the Board should grant the application, the board shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license. If the board grants the license subject to a ban, it may impose other conditions in addition to that ban as express conditions of granting the license.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing controlled substances, regardless of adjudication in any state, the appropriate panel shall, at a minimum, ban the licensee from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as a disciplinary sanction. In addition to this minimum sanction, the panel may take any appropriate disciplinary action against the license, or in lieu of the minimum sanction, may revoke the license, based upon the facts available to the panel at the time of action.

(4)(a) If an initial applicant has surrendered their professional license or placed that license into an inactive or retired status to resolve a pending licensing investigation, the board shall not grant a license to that initial applicant, unless the licensing authority of that state has subsequently reissued or reinstated the license. If the licensing authority of the state has subsequently reissued or reinstated the license, the board may exercise its normal discretion in determining whether to grant or deny the application based upon the available facts.

(b) If an initial applicant has had a disciplinary action taken against or sanction imposed upon the applicant's license to practice medicine or osteopathy in any state, the board shall, at a minimum, impose the same substantive sanctions imposed by the other state as an express condition of granting the license, or may deny the application, or, in addition to the minimum sanction, impose additional sanctions as an express condition of granting the license, based upon the facts available at the time.

(c) If a licensee has had disciplinary action taken against or sanctions imposed upon their license to practice medicine or osteopathy in any state, the appropriate panel shall, at a minimum, impose the same substantive sanctions as disciplinary sanction against their Kentucky license. In addition to this minimum sanction, the panel may take any appropriate additional disciplinary action against the license, or in lieu of the minimum sanction, the

panel may revoke the license, based upon the facts available to the panel at the time of action.

(5) Failure to report either a criminal conviction or plea, or disciplinary sanctions by another licensing board, as required by this section, shall constitute "a violation of law which constitutes an immediate danger to the public health, safety, or welfare," for purposes of KRS 311.592 and 13B.125. If the board or one (1) of its panels learns that a licensee has suffered a qualifying criminal conviction or disciplinary sanction and has failed to report it as required by this section, the panel or its chair may immediately issue an emergency order appropriately suspending or restricting the licensee in accordance with this section. If such an emergency order is issued and an emergency hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

(6) If the only violation charged in a complaint against the licensee is a criminal conviction or disciplinary sanction described in this section, and the conviction or disciplinary action may be proved by accompanying official certification, the board shall take appropriate steps to expedite the resolution of that complaint. Following receipt of the licensee's response to the complaint, board counsel shall promptly file a motion for summary disposition on the ground that no genuine issues of material fact are in dispute, pursuant to KRS 13B.090(2). The licensee shall not be permitted to re-litigate either the criminal conviction or disciplinary sanction; the only available defense is that the certification of the document is fraudulent. If the licensee has admitted the occurrence of the criminal conviction or disciplinary action in the response, no additional response is required or permitted to the motion for summary disposition. If the licensee has denied the occurrence of the criminal conviction or disciplinary sanction, and alleges that the certification is fraudulent, the licensee may file a response to the motion for summary resolution within twenty (20) days of receipt of the motion. Once the assigned hearing officer determines that no response is permitted or has received the written response within the time allotted or determines that a response was not filed within the allotted time, the hearing officer shall issue a ruling upon the motion as soon as possible but no later than thirty (30) days after the motion is submitted for decision. If the hearing officer issues a recommended order, the recommended order shall be presented to the board's Hearing Panel at its next meeting for resolution and imposition of the sanction required by this section.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 11:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for disciplinary proceedings, reception of grievances, meeting dates of the board and panels and mandatory reporting requirements.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the board and panels and mandatory reporting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes requirements for investigating grievances regarding prescribing, establishes the schedule of board and panel meetings and sets out mandatory reporting requirements.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of board and panel meetings and sets out mandatory reporting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of board and panel meetings and sets out mandatory reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of Board and Panel meetings and sets out mandatory reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Physicians will be required to report disciplinary sanctions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation is not expected to incur any additional cost to the physicians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will be able to assist in curbing the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (Amendment)

201 KAR 9:310. Continuing medical education.

RELATES TO: KRS 214.610, 214.615, 214.620, 218A.205, 311.565(1)(b), 311.601

STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), 311.601(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.601(1) authorizes the board to promulgate an administrative regulation that establishes requirements to insure[ensure] the continuing professional competency of licensees. The amendment of this administrative regulation establishes continuing medical education requirements relating to the use of KASPER, pain management, and addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

Section 1. Continuing Medical Education. A licensee shall submit, with his annual licensure renewal form, verification of satisfactory completion of a program of continuing medical education.

Section 2. In order to meet the continuing medical education requirements, a licensee shall:

(1) Submit evidence that thirty (30) of the sixty (60) hours shall have been certified in Category I by an organization accredited by the: (a) Accreditation Council on Continuing Medical Education; or (b) The American Osteopathic Association;

(2)(a) Submit evidence that the licensee has received the American Medical Association's "physician recognition award", or the American Osteopathic Association's "osteopathic physicians' recognition award"; and

(b) Award is in effect at the time a license is renewed;

(3) Submit verification that the:

(a) Licensee has completed continuing medical education requirements of any specialty organization which is recognized by the AMA or AOA as at least equivalent to their recognition awards; and

(b) Certification is in effect at the time a license is renewed; or

(4) Submit verification that the licensee is in, or has been in, an approved postgraduate training program.

(5) Each year of postgraduate training shall be equivalent to fifty (50) hours of continuing medical education.

Section 3. Required Hours of Continuing Education. (1) For each three (3) year continuing education cycle, a licensee shall complete:

(a) A total of sixty (60) hours of continuing medical education, if his license has been renewed for each year of a continuing medical education cycle.

(b) If his license has not been renewed for each year of a continuing medical education cycle, a licensee shall complete twenty (20) hours of continuing medical education for each year for which his license has been renewed.

(c) A licensee whose initial licensure was granted the first year of the continuing education cycle for which verification is submitted shall complete sixty (60) hours of continuing medical education before the end of the cycle;

(d) A licensee whose initial licensure was granted the second year of the continuing education cycle for which verification is submitted shall complete forty (40) hours of continuing medical education before the end of the cycle;

(e) A licensee whose initial licensure was granted the third year of the continuing education cycle for which verification is submitted shall complete twenty (20) hours of continuing medical education before the end of the cycle.

(2) Upon renewal of licensure following the end of a three (3) year continuing education cycle, a licensee shall certify that he has met the continuing medical education requirements for the cycle as provided by this section.

(3) Verification of completion of continuing medical education requirements shall be submitted upon request by the board.

Section 4. The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification.

Section 5. During each ten (10) year period of their practice, each licensee shall complete a minimum of two (2) hours of continuing medical education in HIV/AIDS courses approved pursuant to KRS 214.610, 214.615 and 214.620.

Section 6. (1) For each three (3) year continuing education cycle beginning on January 1, 2015, a licensee who is authorized to prescribe or dispense controlled substances within the Commonwealth at any time during that cycle shall complete at least four and one-half (4.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders or a combination of two (2) or more of those subjects. A licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for that cycle.

(2) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances within the Commonwealth during any portion of the three (3) year continuing education cycle beginning on January 1, 2012 and ending on December 31, 2014 shall complete at least four and one-half (4.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders or a combination of two (2) or more of those subjects on or before December 31, 2014. The physician may satisfy this requirement completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for this cycle.

(3) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky during any portion of calen-

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dar year 2014 shall complete at least one and one-half (1.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders or a combination of two (2) or more of those subjects on or before December 31, 2014, and shall submit written verification of compliance to the board on or before January 15, 2015.

(4) To qualify as approved continuing education under this section, the educational program must have been approved in advance for the specified number of continuing education hours by the board. The board may approve educational programs that consist of a live presentation, that are presented by live or recorded webinars, or that are presented through online modules. The board shall maintain a current listing of approved continuing education programs on its official Web site - www.kbml.ky.gov.

(5)(a) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee must complete the required number of continuing education hours for each period designated in this section.

(b) Failure to complete the required number of continuing education hours for the required period, or to submit the required written verification within the time specified shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(c) If the board determines that a licensee has failed to complete the required continuing education hours within the time specified or has failed to provide the written verification of completion within the time specified, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until such time as the licensee has completed the required continuing education hours for that period and has provided written verification of such completion to the board.

(d) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to paragraph (c) of this subsection shall remain valid and in effect until the board has received written verification that the licensee has successfully completed the required continuing education hours for the time period specified. Upon receipt of such written verification, the panel or its chair will immediately issue an order terminating the emergency order issued pursuant to this section.

(e) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with written notification on board letterhead stating that the board has not received the required written verification that the licensee completed the required continuing education hours for the period specified by the time specified.

(6) If a licensee should prescribe or dispense controlled substances within the Commonwealth of Kentucky during any period after the licensee has failed to complete the required continuing education hours within the time specified or has failed to provide written verification of such completion within the time specified, each instance of prescribing or dispensing of such controlled substances shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and will serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 7.[6-] The board may randomly require physicians submitting certification of continuing medical education to demonstrate satisfactory completion of the continuing medical education requirements stated in his certification.

Section 8.[7-] (1) A licensee shall be fined a minimum of \$200 [dollars], if he fails to:

(a) Timely complete the continuing medical education requirements; and

(b) Obtain an extension of time for completion of the continuing medical education requirements.

(2)(a) A licensee subject to subsection (1) of this section shall be granted a period of six (6) months to come into compliance.

(b) If a licensee has not completed the continuing medical education requirements within the six (6) month period established by this subsection, his license shall:

1. Be immediately suspended; and

2. Remain suspended until he has submitted verifiable evidence that he has completed the continuing education requirements.

Section 9.[8-] A waiver of the requirements established by the provisions of this administrative regulation shall not be granted.

Section 10.[9-] Incorporation by Reference. (1) "Continuing Medical Education Certification Form" [3/97] is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, 8 a.m. to 4:30 p.m., Monday through Friday.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on September 27, 2012 at 9:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 20, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(2) If this is an amendment to an existing regulation, provide a

brief summary of:

(a) How the amendment will change this existing administrative regulation; This amendment establishes requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes; This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management, and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish the requirements for obtaining continuing medical education hours relating to the use of KASPER, pain management and addiction disorders for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect physicians licensed in Kentucky who prescribe or dispense controlled substances.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky will have to obtain the appropriate number of continuing medical education hours specified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Approximate cost for each physician to obtain the required number of continuing medical education hours is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will be appropriately informed in the areas of KASPER use, pain management, and addiction disorders to curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.202.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290(4), 322.290(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 requires the board to establish fees for licensure. This administrative regulation establishes fees for examination, licensure, reinstatement, reissuance, and renewal.

Section 1. Examination Fees. (1) The fees for taking the Principles and Practice of Engineering Examination, the Principles and Practice of Land Surveying Examination, the Fundamentals of Engineering Examination, and the Fundamentals of Land Surveying Examination shall be the actual amounts charged by the National Council of Examiners for Engineering and Surveying.

(2) The board shall reimburse examination fees for those qualifying individuals as set out herein below, as follows~~for successfully completing~~:

(a) For successfully completing with a passing score, an~~An~~ examination listed in subsection (1) of this section for those applicants who are active members of the Armed Forces of the United States whose military official home of record was Kentucky on the date the examination was taken, or veterans of the Armed Forces of the United States whose residence for income tax purposes was Kentucky on the date the examination was taken. Application for reimbursement shall be made in writing to the board within one (1) year following the date the examination was taken, and shall include proof of passing the examination, ~~and of~~ service in the Armed Forces of the United States, and Kentucky being either the applicant's military official home of record or the applicant's residence for income tax purposes, on the date the examination was taken.

(b) For successfully completing with a passing score, the~~The~~ Fundamentals of Engineering Examination or the Fundamentals of Surveying Examination for a student currently enrolled in a Kentucky university or college on the date the examination was taken. Application for reimbursement shall be made in writing to the board within one (1) year following the date the examination was taken, and shall include proof of passing the examination and of enrollment in a Kentucky university or college on the date the examination was taken.

Section 2. Endorsement, Renewal, Reinstatement, and Reissuance. (1) Renewal of an individual license shall be \$150 or shall be twenty (20) dollars for retired or inactive status.

(a) Each licensee whose surname begins with the letters A through K shall renew in odd-numbered years.

(b) Each licensee whose surname begins with the letters L through Z shall renew in even-numbered years.

(2) (a) The fee for reinstatement of an expired license or business entity permit that has been expired for less than one (1) year shall be calculated as provided by KRS 322.160(3).

(b) If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall file an application for reinstatement and pay a fee of \$500.

(3) Reissuance of a license after loss or destruction shall be twenty-five (25) dollars.

(4) The fee for licensure by endorsement as a professional engineer or professional land surveyor shall be \$300. The fee shall accompany the application for licensure, which is incorporated by reference in 201 KAR 18:020.

(5) An applicant who fails the two (2) hour state specific examination on the first attempt shall be charged fifty (50) dollars for each subsequent attempt.

Section 3. Fees for Examination and Licensure in Additional Disciplines. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines of engineering for which he has not been licensed.

(2) For each discipline of engineering he shall submit an:

(a) Updated application, which is incorporated by reference in 201 KAR 18:020; and

(b) Examination fee as established in this administrative regulation.

Section 4. Business Entities. (1) The fee for a permit to practice engineering or land surveying in this state shall be \$100 for either permit.

(2) A business entity that applies for a dual permit shall submit \$150.

(3) These fees shall accompany the application.

(4) The annual renewal fee for an individual permit shall be \$100.

(5) The annual renewal fee for a dual permit shall be \$150.

Section 5. Payment of Fees. (1) (a) Fees payable pursuant to Section 2 of this administrative regulation shall be paid by check or money order made payable to "Kentucky Board of Licensure" or by major credit card.

(b) Fees payable pursuant to Section 1 of this administrative regulation shall be paid directly to the examination service.

(2) All fees shall be nonrefundable.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: August 13, 2012

FILED WITH LRC: August 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2012 at 2:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notification of an individual's intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. If the public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel,

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes fees for examination, licensure, reinstatement, verification, reissuance, and renewal.

(b) The necessity of this administrative regulation: KRS 322.100 requires the board to establish license fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains all fee amounts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets all fees so that the board can charge the appropriate amount for each item.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the qualifications for reimbursement of examination fees for present or former members of the Armed Forces of the United States and sets a time limit for requests for reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the regulation needs to reflect that reimbursement is available only for current or former members of the Armed Forces of the United States the States who have an actual or military official home of record in Kentucky on the date the examination is taken, and that reimbursement requests are made within an appropriate time period.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 322.100 since that statute gives the board the authority to set license fees, which authority would include reimbursing fees for the taking of licensing examinations so as to encourage licensure among those Kentucky members or veterans of the Armed Forces of the United States.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a clear set of qualifications required for reimbursement and to create a set time frame for reimbursement approvals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation in any given year, will affect approximately ten present or former members of the Armed Services of the United States who have a qualifying residence in Kentucky and who successfully pass one of the referenced licensing examinations, approximately 300 students in any given year, and the board itself in making those reimbursements.

(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) A detailed explanation of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required of either the licensees or the board.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will result in clarity of application of the regulation.

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

(a.) Initially: No additional increase in the board's obligation to fund this program.

(b.) On a continuing basis: No additional increase in the board's obligation to fund this program.

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

stricted Agency Funds. The board receives no general or federal 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 in funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.090, KRS 322.100, KRS 322.110, KRS 322.120, KRS 322.290(4), and KRS 322.290(10)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue or expenditure to any agency as a result of this 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? 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 will be no additional cost involved in administering this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost involved in administering this program for the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no additional cost or revenue generated by this amendment.

GENERAL GOVERNMENT CABINET

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:192. Continuing professional development for professional land surveyors.

RELATES TO: KRS 322.290(15)

STATUTORY AUTHORITY: KRS 322.290(4), (15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(15) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(15) for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar.

(2) "Continuing professional development" or "CPD" means participation in activities, beyond the basic educational require-

ments, that:

(a) Provide specific content planned and evaluated to improve the land surveyor's professional competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional land surveyor's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Which meet the requirements established by the provisions of this administrative regulation.

(3) "CPDC" means the Continuing Professional Development Committee.

(4) "Professional development hour" or "PDH" means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Provider" means a person, school, association, company, corporation, or group who has developed a CPD activity and participates directly in the presentation.

(6) "Sponsor" means a group, organization, or professional society, offering activities by providers.

Section 2. Continuing Professional Development Committee.

(1) The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair.

(2) The CPDC shall consist of three (3) board of licensure members of which at least two (2) are professional land surveyors.

(3) Work of the CPDC shall be considered work of the board and compensation shall be given as provided by KRS 322.270.

(4) The CPDC shall hold regular meetings and a record of its action shall be maintained.

(5) The CPDC shall have the authority to rule on all matters concerning continuing professional development for professional land surveyors. Decisions of the CPDC shall be ratified by the board. A licensee who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at a subsequent meeting of the board~~(the board's next meeting)~~.

Section 3. Program Structure. (1) Except as provided otherwise in this administrative regulation, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year for a total of a minimum of sixteen (16) professional development hours for each reporting period.

(2) The requirement for professional development hours shall include a four (4) hour board sponsored course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. In the year that this course is taken, it shall count as four (4) of the required eight (8) hours.

(3) A maximum of four (4) hours in excess of the sixteen (16)~~eight (8)~~ professional development hours required to be earned in a reporting period~~calendar year~~ may be carried forward to the next reporting period~~calendar year~~.

(4) Failure to earn the sixteen (16)~~eight (8)~~ professional development hours per reporting period shall make the licensee ineligible for licensure renewal.

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of the following activities subject to approval by the CPDC and board:

(a) College or university courses;

(b) Seminars;

(c) Tutorials;

(d) In-house programs sponsored by corporations or other organizations;

(e) Correspondence courses;

(f) Televised or videotaped courses~~[with approved supervision]~~;

(g) Distance learning courses~~[with approved supervision]~~;

(h) Teaching or instructing courses, programs, or items specified in this subsection; this~~The~~ credit may be claimed at twice

the number of hours permitted participants, but such credit may not be claimed more than once for teaching or instructing the same or substantially similar course, program, or item;

(i) Making or attending approved presentations at technical or professional meetings; or

(j) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:

(a) Be relevant to the practice of land surveying;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning[~~presented sequentially~~];

(d) Be conducted by individuals with education, training, or expertise[~~acceptable to the CPDC~~];

(e) Be offered for the number of professional development hours recommended by the program author, subject however, to review, and acceptance or adjustment,[~~approved~~] by the CPDC; and

(f) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

(3) CPD activities shall earn credit only when substantially different from a course for which credit was claimed or granted in the current calendar year or previous two (2) calendar years.

(4) Professional development hours shall be converted as follows:

(a) One (1) university semester hour shall equal fifteen (15) professional development hours.

(b) One (1) university quarter hour shall equal ten (10) professional development hours.

(c) One (1) continuing education unit shall equal ten (10) professional development hours.[~~(5) Unless stated otherwise in this administrative regulation, credit for courses shall be earned at the rate of one (1) professional development hour for each hour of instruction completed, if approved by the CPDC.~~]

Section 5. Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors as follows:

(1) Approval of activities is valid for a specified approval period or until alteration of the activity is approved by the CPDC.

(2) Failure to notify the CPDC of a change in an activity, including a change in the instructor, may render approval of the activity null and void.

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors but may be advertised[~~without a conspicuous notice~~] that the activity has been "submitted for consideration."

(4) If prior or post approval is desired, a written request for approval of the activity shall be submitted to and received by the CPDC on the "Continuing Professional Development Course Approval Form" at least forty five (45)[~~sixty (60)~~] days prior to the meeting date of the CPDC at which the request will be considered[~~presentation of the activity~~]. All other requests for approval of an activity shall be submitted to the CPDC on a "Continuing Professional Development Course Approval Form" at least two (2) weeks before the CPDC meeting which considers the activity for approval].

(5) All requests for approval of an activity shall be accompanied by:

(a) A detailed outline and objectives;

(b) A time outline including registration, introductions, welcomes, breaks, and meals;

(c) Handouts or reference materials needed to evaluate the activity; and

(d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board reserves the right to send a representative to monitor an activity:

(a) The provider or sponsor shall waive all fees for the CPDC or board representative; and

(b) Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.

(7) An evaluation form shall be made available for participants

at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall be prohibited from presenting a CPD activity for credit without prior, written[~~specific~~] approval from the board.

(9) When a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request for approval to the CPDC and including in that request, the items listed in subsection (5) of this section.

(10) Upon approval, an activity shall receive a CPD number which shall be used to identify the activity.

(11) If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for ratification.

Section 6. Exemptions and Extensions. The following professional land surveyors may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption:

(1) A professional land surveyor shall be exempted for the reporting period containing the calendar year in which he or she is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year and the exemption or extension is only valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board, a former professional land surveyor shall earn the continuing professional development hours required for each year the license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. (1) On the biennial renewal form, a professional land surveyor shall certify whether or not he or she has complied with the requirements of this administrative regulation[~~have been met~~].

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.

Section 9. Audits. (1) Compliance with the annual CPD requirements shall be determined through an audit process.

(2) Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board.

(3) Individuals selected for audit shall within thirty (30) days of the board's request, provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:

(a) Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation.

(b) Information regarding seminar or course content, instructors, and sponsoring organizations.

(4) Verification records and documentation for audit purposes shall be maintained by individual licensees for a period of the current reporting period and the two (2) previous reporting periods[~~three (3) years after completion of the CPD activity~~].

(5) If continuing professional development credit is disallowed, a professional land surveyor shall have 180 calendar days after notification to substantiate the original claim or earn other credit to meet the requirement.

[~~6~~](4) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the professional land surveyor to disciplinary action.

[~~7~~](5) An audit resulting in a determination of noncompliance shall subject the professional land surveyor to an automatic audit

the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

(8)(6) A professional land surveyor who is under investigation pursuant to KRS 322.190 may be subjected to the audit requirements of this section.

Section 10. Incorporation by Reference. (1) "Continuing Professional Development Course Approval Form", November 1999, State Board of Licensure for Professional Engineers and Land Surveyors, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: August 13, 2012

FILED WITH LRC: August 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2012 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notification of an individual's intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. If the public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements the continuing professional development program mandated by KRS 322.290(14) for professional land surveyors.

(b) The necessity of this administrative regulation: KRS 322.290(14) mandates a professional development program for professional land surveyors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements of the mandated professional development program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets the requirements of the continuing professional development program for professional land surveyors so that the board can administer the program and inform licensees of the requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment addresses four main areas of refinement: it establishes consistency in the use of the two year reporting period for earning qualifying cpd credits, rather than utilizing a yearly basis for some compliance requirements, and the two year reporting period for others; it establishes a specific time frame for a response to an audit request; it establishes the appropriate document retention obligation for cpd records; and it changes the time

frame for submission of courses or programs for cpd approval so as to eliminate the expense of interim meetings solely for that purpose. Additionally, it makes some minor changes in wording to enhance clarity in other parts of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to provide clarity to the requirements for cpd compliance, to the audit process, and to provide for agency cost savings with regard to the process of approval of programs for cpd credit.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 322.290(14) since that statute requires a professional development program for professional land surveyors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment enhances the clarity of the requirements of the professional development program and provides the supporting regulatory language for the board to enforce the requirement of KRS 322.290(14).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximate 1,300 licensed professional land surveyors and the board itself.

(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) A detailed explanation of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Land surveyors will be obligated to comply with the new time requirements for seeking approval of cpd course work, and with requests for supporting documentation if audited, and will have to retain cpd documentation for the requisite time.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will result in clarity of application of the regulation, and the audit process. The board will recognize some cost savings in eliminating any necessity of having interim cpd committee meetings for consideration of cpd approval requests.

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

(a.) Initially: None

(b.) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal 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 in funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 201 KAR 18:192; KRS 322.290(14)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue or expenditure to any agency as a result of this 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? 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 will be no additional cost involved in administering this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost involved in administering this program for the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no additional cost or revenue generated by this amendment.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)**

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 218A.205(3)(g)2, 314.011, 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(g)2, 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1) Complete an "Application for Licensure as an Advanced Practice Registered Nurse" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

(6) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request

submitted under subsection (5)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(g)2 and any relevant data on the applicant is received.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b) 1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of this section.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice consistent with the population focus required by and defined by KRS 314.011;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board on Certification and Recertification of Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners; and
(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection 2 of this section shall be deemed to meet the definition of population focus of KRS 314.011(20):

- (a) Acute Care NP;
- (b) Adult NP;
- (c) Adult Psychiatric and Mental Health NP;
- (d) Family NP;
- (e) Family Psychiatric and Mental Health NP;
- (f) Gerontological NP;
- (g) Neonatal NP;
- (h) Pediatric NP;
- (i) Pediatric/Primary Care NP;
- (j) Pediatric/Acute Care NP;
- (k) Women's Health NP;
- (l) Adult Health CNS;
- (m) Adult Psychiatric and Mental Health CNS;
- (n) Child and Adolescent Psychiatric and Mental Health CNS;
- (o) Gerontological CNS;
- (p) Pediatric CNS;
- (q) Adult Acute Care CNS;
- (r) Pediatric Acute Care CNS; and
- (s) Neonatal Acute Care CNS.

(4) The board recognizes the Oncology Nursing Certification Corporation only for those individuals who received certification prior to the effective date of this administrative regulation and who have continually renewed their Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App."

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

- (a) Renew the registered nurse license or privilege on an active status;
- (b) Submit a completed "Annual Licensure Renewal Application: RN and APRN" or a completed "Annual APRN Licensure Renewal Application for APRN with RN Compact License (not Kentucky)" form, as applicable, and as required by 201 KAR 20:370, Section 1(1);
- (c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and
- (d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

- (a) A current active license has been issued by the board or a privilege is recognized by the board; and
 - (b) The advanced practice registered nurse license has been reinstated.
- (4) An advanced practice registered nurse shall provide evi-

dence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

- (a) Submit a completed "Application for Licensure as an Advanced Practice Registered Nurse" form as required by 201 KAR 20:370, Section 1(1);
 - (b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and
 - (c) Maintain current certification by a recognized national certifying organization.
- (3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

- (a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;
- (b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
- (c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
- (d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b) An APRN whose certification or recertification lapses prior to the expiration of the APRN license and who does not provide evidence of current certification or recertification after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

- (a) Notify the board of that fact; and
- (b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

- (1) A postbasic educational program for preparation for advanced practice registered nursing; or
- (2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed as an advanced practice registered nurse if

his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures set in KRS 314.091.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 1:00 p.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 September 20, 2012, 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 October 1, 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 out licensure procedures, program requirements, and recognizes certain national certifying organizations for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out procedures and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out procedures and requirements.

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

(a) How the amendment will change this existing administrative regulation: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of obtaining information from the National Practitioner Data Bank (NPDB).

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By requiring the NPDB information for licensure.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN applicants for licensure, 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: Under the amendment an APRN applicant will not have to take any action to comply. The Board will make the requisite query.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.042, 314.193(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1),

314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)" means the written document pursuant to KRS 314.042(9).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

- (1) Scope and Standards of Psychiatric-Mental Health Nursing Practice;
- (2) Nursing: Scope and Standards of Practice;
- (3) Scope and Standards for Nurse Anesthesia Practice;
- (4) Standards for Office-based Anesthesia Practice;
- (5) Standards for the Practice of Midwifery;
- (6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;
- (7) Pediatric Nursing: Scope and Standards of Practice;
- (8) Standards of Practice for Nurse Practitioners;
- (9) Scope of Practice for Nurse Practitioners;
- (10) Scope and Standards of Practice for the Acute Care Nurse Practitioner;
- (11) Neonatal Nursing: Scope and Standards of Practice;
- (12) Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice; and
- (13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the APRN shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Sub-

stances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of the registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of the DEA Controlled Substance Registration Certificate number shall be reported to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by 201 KAR Chapter 20.

Section 9. Prescribing Standards for Controlled Substances.

(1)(a) This section shall apply to an APRN with a CAPA-CS when prescribing a controlled substance listed in subsection (7) of this section.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.

(2) The APRN shall, prior to initially prescribing a controlled substance listed in subsection (7) of this section, for a patient:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, including potential discontinuation of the use of controlled substances.

(4) For subsequent prescriptions of a controlled substance listed in subsection (7) of this section, the APRN shall:

(a) Obtain necessary updates to the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as necessary; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance.

(6) This section shall not apply to:

(a) Administering a controlled substance or anesthesia immediately prior to or during surgery;

(b) Administering a controlled substance necessary to treat a patient in an emergency situation:

1. At the scene of an emergency; or

2. In a licensed ground or air ambulance;

(c) Prescribing a controlled substance for a hospice patient when functioning within the scope of a hospice program or hospice inpatient unit licensed under KRS Chapter 216B;

(d) A patient admitted to a licensed hospital, during and as part of the patient's normal and expected course of admission at that hospital;

(e) A patient who is a registered resident of a skilled long term

care facility; or

(f) Prescribing a controlled substance for a patient receiving palliative care.

(7) This section shall only apply to the following controlled substances:

- (a) Ambien;
- (b) Anorexics;
- (c) Ativan;
- (d) Klonopin;
- (e) Librium;
- (f) Nubain;
- (g) Oxazepam;
- (h) Phentermine;
- (i) Soma;
- (j) Stadol;
- (k) Stadol NS;
- (l) Tramadol;
- (m) Valium;
- (n) Versed; and
- (o) Xanax.

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

- (a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2007 Edition, American Nurses' Association;
- (b) "Nursing: Scope and Standards of Practice", 2010 Edition, American Nurses' Association;
- (c) "Standards for Office-based Anesthesia Practice", 2010 Edition, American Association of Nurse Anesthetists;
- (d) "Scope and Standards for Nurse Anesthesia Practice", 2010 Edition, American Association of Nurse Anesthetists;
- (e) "Standards for the Practice of Midwifery", 2009 Edition, American College of Nurse-midwives;
- (f) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2008 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;
- (g) "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition, National Association of Pediatric Nurse Practitioners;
- (h) "Standards of Practice for Nurse Practitioners", 2010 Edition, American Academy of Nurse Practitioners;
- (i) "Scope of Practice for Nurse Practitioners", 2010 Edition, American Academy of Nurse Practitioners;
- (j) "Scope and Standards of Practice for the Acute Care Nurse Practitioner", 2006 Edition, American Association of Critical Care Nurses;
- (k) "Neonatal Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses Association/National Association of Neonatal Nurses;
- (l) "Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice", 2010 Edition, American Association of Critical-Care Nurses;
- (m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society; and
- (n) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 6/2010, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 1:00 p.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 September 20, 2012, 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 October 1, 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 out the scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out 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: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of setting prescribing standards for controlled substances. In addition, the amendment requires APRNs to report their DEA number to the Board. This will assist the Board in obtaining KASPER reports when needed.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By setting prescribing standards.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute. Also, the Board will have necessary information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers, presently there are approximately 1500.

(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 report DEA numbers to the Board. In addition, they will have to follow controlled substance prescribing standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 218A.205, 314.011(13), 314.031, 314.071(4), 314.091, 314.107, 314.470, 314.991(3)

STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are determined to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another

jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint sets forth a potential violation or the conduct falls within the statutory instances which must be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5)(a) A complaint shall be evaluated to determine if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.470. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

(7)(a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;

2. The Office of the Attorney General; and

3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be determined that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107.

(c) Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that insure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS 314.470, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Cured noncompliance with continuing education requirements, as set forth in 201 KAR 20:215, Section 3;

5. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months;

6. Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a chemical dependency evaluation that does not indicate a diagnosis of chemical dependency;

7. Failed to report a criminal conviction or disciplinary action in another jurisdiction on an application; or

8. Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

(6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).

(a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after

July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.

(b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe controlled substances suspended for at least three (3) months and as further restricted as determined by the board.

(c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.

(d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.

(e) Cases that come under KRS 314.011(21)(c) shall not be considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform.

(2) Requiring the individual have continuous, direct, on-site supervision by a licensed nurse, physician, or dentist.

(3) Specifying the individual's practice setting.

(4) Specifying the types of patients to whom the individual may give nursing care.

(5) Requiring the individual to notify the board in writing of a change in name, address, or employment.

(6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements set by the board.

(7) Requiring the individual to submit to the board evidence of physical or chemical dependency, mental health evaluations, counseling, therapy, or drug screens.

(8) Meeting with representatives of the board.

(9) Issuing the license or temporary work permit for a specified period of time.

(10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions.

(11) Requiring the individual to be employed as a nurse for a specified period of time.

(12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint so long as the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 1:00 p.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 September 20, 2012, 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 October 1, 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 out the procedures for the investigation and disposition of complaints against nurses.

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out 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: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of an expedited review of certain complaints involving APRN controlled substance prescriptions, the consequences of criminal convictions involving controlled substances on APRNs, acceptance of anonymous complaints, and submission of all disciplinary actions to the National Practitioner Data Bank.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By dealing with the specific actions required by House Bill 1.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers who may have complaints against them, 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: The amendment does not place any new responsibilities on the APRN. It affects how the Board handles certain complaints.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: It is impossible to determine what costs would be involved. Each complaint involves a unique factual situation and

requires an investigation.

(b) On a continuing basis: It is impossible to determine any additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 218A.205(3)(h), 314.011(12), 314.073, 314.991(1)-(3)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means an experienced and competent nurse who assumes responsibility to assist with the clinical practice experience.

rience of a nursing student or new employee by serving as a role model, teacher, and resource.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation are as follows:

(1) Fourteen (14) contact hours of continuing education which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period; and

(b) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the licensure period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire licensure period; or

(c) Have been recertified during the licensure period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior, and that is evidenced by an abstract of the project which includes a summary of the findings;

(b) Publication of a nursing-related article;

(c) A nursing continuing education presentation that is:

1. A presentation that is designed and developed by the presenter;

2. Presented to nurses or other health professionals; and

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering;

(d) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one-to-one relationship between the preceptor and the student or employee.

3. The preceptor may precept more than one (1) student or employee during the 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The evaluation shall:

1. Cover a period of at least six (6) months during the earning period;

2. Be signed by the nurse's supervisor; and

3. Include the name, address and telephone number of the employer.

(5) A nurse who renews a license for the first time following graduation from a prelicensure program of nursing shall utilize the following methods for continuing competency validation:

(a) If employed, either

1. The provisions of subsection (4) of this section or,

2. The provisions of subsection (4)(a) of this section and documentation of the nurse's completion of an orientation to the employer; or

(b) If not employed or is unable to provide proof of an orientation or an evaluation, the provisions of subsection (1) of this section.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS education:

(a) Approved by the Cabinet for Health and Family Services pursuant to KRS 214.610; or

(b) Offered by a provider approved pursuant to 201 KAR 20:220.

(c) These contact hours shall be earned at least one (1) time every ten (10) years.

(2)(a) Advanced practice registered nurses shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(3) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(4)(a) Registered nurses and licensed practical nurses licensed as of July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(7) by December 31, 2013.

(b) Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(7) within three (3) years of licensure.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period, except for HIV/AIDS education records which shall be maintained for twelve (12) years.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with the continuing competency requirements, he shall be allowed to cure the noncompliance if he:

1. Meets the continuing competency requirements within ninety (90) days of notification of noncompliance;

2. Enters a consent decree with the board; and

3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat a continuing education offering within a licensure period.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection 3 of this section.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the preclicensure curriculum of the individual licensee; or

(b) An academic course that is applicable to the nurse's role and beyond the preclicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.

(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 8. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an "Application for Individual Review"; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards established by:

(a) Sections 2 through 7 of this administrative regulation; and

(b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 9. Incorporation by Reference. (1) "Application for Individual Review", 9/2005, Kentucky Board of Nursing, is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 1:00 p.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 September 20, 2012, 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 October 1, 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 out the requirements for continuing competency for nurses.

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out requirements.

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

(a) How the amendment will change this existing administrative regulation: House Bill 1 (2012 Special Session) requires the Board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of certain continuing education for APRNs who prescribe controlled substances. Presently, APRNs are required to have five hours of continuing education each year on pharmacology. The amendment requires APRNs who prescribe controlled substances to have at least 1.5 hours of the five on the mandated topics.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By setting the continuing education requirement.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers, presently there are approximately 1500.

(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 affected APRNs will have to earn the mandated continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It would be anticipated that the continuing education provider may charge for the class.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase 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) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Podiatry
(Amendment)**

201 KAR 25:011. Approved schools; examination application; fees.

RELATES TO: KRS 218A.205, 311.420

STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board approves the following schools or colleges of podiatry as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida.

(b) California College of Podiatric Medicine, San Francisco, California.

(c) College of Podiatric Medicine and Surgery, Des Moines, Iowa.

(d) Dr. William M. Scholl College of Podiatric Medicine, Chicago, Illinois.

(e) New York College of Podiatric Medicine, New York, New

York.

(f) Ohio College of Podiatric Medicine, Cleveland, Ohio.

(g) Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania.

(h) Arizona Podiatric Medicine Program at Midwestern University, Glendale, Arizona.

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has filed an application for a license with the board.

Section 2. (1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed Application for Examination [application] with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant.

(3) The fee for the examination or reexamination shall be \$250 and shall be paid when the application for examination or reexamination is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

Section 3. (1) Prior to approval for examination, an applicant shall:

(a) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation;

(b) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services; and

(c) Report to the board, with the Application for Examination, any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 4. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the Board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

Section 5. Requirements for a person issued a license by the board. (1) A person who has been approved for a license from the board shall register with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services within a reasonable time after issuance of the license and immediately submit proof of the registration to the board.

(2) In no circumstance shall a person who has received a license from the board prescribe any controlled substance before he or she is registered with KASPER.

(3) The board shall temporarily suspend a license under 201

KAR 23:051, Section 5, if an individual has:

(a) Failed to register with KASPER in a reasonable time after the approval for licensure by the board or prescribed a controlled substance prior to registration with KASPER.

(b) In addition to temporary suspension, the board may take additional disciplinary action against a license under KRS 311.480.

Section 6. Incorporation by Reference. (1) "Application for Examination", [§1994.1] is incorporated by reference.

(2) This material [§] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174[908B-S-12th Street, Murray, Kentucky 42071-2947], Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held September 24, 2012, at 1:00 p.m. in Conference Room C located in the Office of the Attorney General; 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Beverley White, Executive Director; Kentucky Board of Podiatry, P.O. Box 174; Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for obtaining a license from the board.

(b) The necessity of this administrative regulation: KRS 311.420 requires all persons engaging in the practice of podiatry to be licensed by the board and to submit to examination by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with KASPER. KRS 218A.205 requires the board to place restrictions on licensees and applications that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged and the procedures to be followed in obtaining a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 authorizes the board to license applicants. KRS 218A.202 authorizes the board to promulgate regulations for registration with KASPER. KRS 218A.205 mandates the placement of restrictions on licensees in certain circumstances.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for persons seeking licensure by the board.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the procedures to be followed in the application process regarding criminal background checks and the restrictions when an applicant has been convicted or disciplined for matters related to controlled substances. It also requires a person seeking licensure from the board

to register with KASPER.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures to be followed in the application process including criminal background checks, restrictions on licensees, and registration with KASPER.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license in the Commonwealth annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons seeking licensure from the board will have to submit to a criminal background check. If they have been convicted of certain crimes, a restriction will be placed on the license in accordance with the mandates of House Bill 1. Persons licensed by the board shall be registered with KASPER.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for submitting to a nation-wide criminal background check and registering with KASPER are not set by the board. It is anticipated that the costs will be under \$100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be licensed by the board in accordance with the law.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons seeking licensure by the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.202; 218A.205; 311.410; 311.420.

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

quent years? None.

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Board of Podiatry
(Amendment)**

201 KAR 25:021. Annual renewal ~~of[notice-for]~~ licenses, fees.

RELATES TO: KRS 218A.205, 311.450

STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450

requires the board to send notices to all podiatrists licensed by the board to their last known address on or before June 1 of each year. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation requires all licensed podiatrists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

Section 1. (1) The annual renewal fee, in the amount of \$150 shall be attached to the completed annual renewal notice when the notice is returned to the board by the podiatrist seeking licensure renewal.

(2) The annual renewal fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, [or] postal money order, personal check, or credit card.

(3) All information requested on the annual renewal notice form shall be furnished to the board when the completed annual renewal notice form is returned to the board, together with a statement of compliance with the continuing education administrative regulations of the board.

(4) Every renewal application shall include proof of registration with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services.

Section 2. (1) Failure to complete the requirements for annual renewal of the license by July 1 of each year shall result in a delinquent penalty fee of \$100.

(2) A licensee shall immediately report to the board any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 3. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on a application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this

section, the Board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held September 24, 2012, at 1:00 p.m. in Conference Room C located in the Office of the Attorney General; 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Beverley White, Executive Director; Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements for renewing a license with the board.

(b) The necessity of this administrative regulation: KRS 311.450 requires annual renewal of licenses with the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with KASPER. KRS 218A.205 requires the board to place restrictions on licensees and applications that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in renewing a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 authorizes the board to license applicants. KRS 218A.202 authorizes the board to promulgate regulations for registration with KASPER. KRS 218A.205 mandates the placement of restrictions on licensees in certain circumstances.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for persons seeking renewal of licensure by the board.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the procedures to be followed in the renewal process regarding criminal background checks and the restrictions when an applicant has been convicted or disciplined for matters related to controlled substances. It also requires a person seeking licensure from the board to register with KASPER.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures to be followed in the renewal process including criminal background checks, restrictions on licensees, and registration with KASPER.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the renewal process.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons renewing licensure will have a restriction placed on the license in accordance with the mandates of House Bill 1. Persons licensed by the board shall show that they have been registered with KASPER.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for registering with KASPER are not set by the board. It is anticipated that the costs will be under \$100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be licensed by the board in accordance with the law.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons renewing a license with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.202; 218A.205; 311.410; 311.420.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (Amendment)

201 KAR 25:031. Continuing education.

RELATES TO: KRS 218A.205, 311.450(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. KRS 218A.205(3)(h) requires the board to mandate continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) hours shall include:

(a) At least fifteen (15) Category A continuing education hours; and

(b) Not more than five (5) Category B continuing education hours.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

(4)(a) Beginning on July 1, 2012, and annually thereafter, each podiatrist licensed by the board shall complete at least one and one-half (1.5) hours of continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(b) This requirement shall be included in the twenty (20) hours of continuing education required by this administrative regulation.

Section 2. Categories of Continuing Education Hours. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall:

(a) Be earned by attendance at:

1. A professional seminar, including the Kentucky Podiatric Medical Association's annual conference;

2. An accredited school of podiatry continuing education program; or

3. Another program approved by the board under Section 6 of this administrative regulation; and

(b) Be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME), except if the course provider or the licensee that intends to take a course has requested and received board approval of the course under Section 6 of this administrative regulation prior to the course's presentation.

(2) A Category B continuing education hour shall relate to non-podiatric medical issues or general practice issues and shall be earned by attendance at or participation in:

(a) Home study courses;

(b) Hospital, clinic, or in-house staff lectures; or

(c) Local or regional medical society or medical association meetings.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years, except for the continuing education records related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) years; and

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request; and

(d) For Category A programs, include proof of APMA/CPME

certification or a written letter of approval from the board.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(4) Every ten (10) years, each licensed podiatrist shall successfully complete two (2) hours of continuing education which:

- (a) Complies with the requirements of KRS 214.610(1); and
- (b) Is approved by:

1. The Kentucky Cabinet for Health and Family Services as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome; or

2. The board.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

- (a) Medical disability of the licensee;
- (b) Illness of the licensee or an immediate family member; or
- (c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

- (a) Submitted by the person holding the license; and
- (b) Accompanied by a document verifying the illness or disability signed by the:

1. Licensee's personal physician; or
2. Immediate family member's personal physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status shall be permitted to use the term "podiatrist" but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking relicensure from inactive to active status shall fulfill the following requirements:

(a) If the licensee has been inactive for no more than five (5) consecutive years, he shall:

1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application and requesting in writing that the license be made active;

2. Have completed twenty (20) hours of Category A continuing education requirements within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 3(4) of this administrative regulation; and

3. Pay:

a. The renewal fee of \$150 established in 201 KAR 25:021, Section 1; and

b. A reactivation fee of \$100.

(b) If a licensee has been in inactive status for more than five (5) consecutive years, he shall:

1. File a completed Application for Examination in accordance with 201 KAR 25:011 and pay the required fee;

2. Be approved by the board to take the examination; and

3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:

(a) A brief summary of the continuing education;

(b) The educational objectives of the continuing education;

(c) The date, time, and place of the provision of the continuing education;

(d) The name and credentials of the individual providing the continuing education; and

(e) The name of the organization providing the continuing education, if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:

(a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;

(b) Is developed and provided by an individual with knowledge and experience in the subject area; and

(c) Contributes directly to the professional competence of a licensee.

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

(a) "Application for Examination", 4/00; and

(b) "License Renewal Application", 1/02.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174 [908B S. 12th Street, Murray, Kentucky 42071-2947], Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held September 24, 2012, at 1:00 p.m. in Conference Room C located in the Office of the Attorney General; 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Beverley White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for renewing a license with the board.

(b) The necessity of this administrative regulation: KRS 218A.205 requires licensees to acquire continuing education on the use of KASPER. This administrative regulation establishes the procedures to be followed in renewing a license and obtaining continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.450 authorizes the board to require continuing education. KRS 218A.205, as enacted by General Assembly in 2012 (1st Extra. Sess.) Ky. Acts ch. 1, requires the board to mandate continuing education on the use of KASPER.

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

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forth the requirements for continuing education for licensees seeking renewal of licensure by the board.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the requirement for continuing education on the use of KASPER.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for continuing education on the use of KASPER.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the renewal process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons renewing licensure will be required to obtain continuing education on the use of KASPER.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for obtaining continuing education on the use of KASPER are not set by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons will receive updated information in accordance with the law.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons renewing a license with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.205; 311.410; 311.450.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (Amendment)

201 KAR 25:051. Procedure for complaints and hearings involving licensees: temporary suspension.

RELATES TO: KRS 218A.205, 311.490

STATUTORY AUTHORITY: KRS 218A.205(3), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.410 authorizes the board to promulgate administrative regulations that are necessary to implement the provisions of KRS 311.390 to 311.510. KRS 218A.205(3)(c) requires the board to establish a procedure for temporarily suspending, limiting, or restricting a license. KRS 218A.205(3)(d) requires the board to establish a procedure for the expedited review of complaints pertaining to improper prescribing or dispensing of controlled substances. This administrative regulation establishes [To establish] the administrative adjudication procedure for all proceedings before the board.

Section 1. Scope and Definitions. (1) This[These] administrative regulation governs[regulations govern] the procedure for the Kentucky State Board of Podiatry in all proceedings before the board in which the legal rights, duties, or privileges of any person is required by statute or by these administrative regulations to be determined after an opportunity for a hearing.

(2) The following definitions shall apply for purposes of administrative adjudicatory procedure unless the context otherwise requires:

(a) "Party" means any person or agency named or admitted as a party to any proceedings of the board and shall include only persons who have a real interest in a matter before the board.

(b) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(c) "Order" means the whole or any part of a final disposition of an adjudication.

(d) "Contested case" means an adjudicatory proceeding before the board in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the board or by some other person.

(e) "Board" means the Kentucky State Board of Podiatry.

(f) "Complaint review committee" means a committee of the board members appointed by the board that:

1. Reviews an initiating complaint;

2. Determines whether an investigation should be conducted;
and

3. Directs and reviews an investigation of the respondent.

(g) "Respondent" means the licensee against whom a complaint has been filed.

Section 2. Complaints and Investigations. (1) Complaints. A complaint may be made by the board or any person against the holder of a license by the filing of written charges with the board's offices.

(a) The board may require the complainant to make the complaint on a printed complaint form provided by the board.

(b) The complaint shall contain a clear and concise description of the issues of fact.

(2) The board shall accept an anonymous complaint if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint or grievance

is meritorious.

Section 3. Complaints. (1) A complaint shall contain:

(a) The name phone number, and address of the person making the charge and the name and address of the place of business of the person or persons against whom charges are made; and

(b) A clear and concise description of the issues of fact.

(2) (a) Upon receipt of a complaint against a licensee, the board shall send a copy of the complaint to the licensee for a response.

(b)1. The complaint shall be sent to the last known address of the licensee that the board has on file.

2. The licensee shall file a response within twenty (20) days from the date of the board's letter and include with the response a copy of the relevant podiatric medical records.

(c) Upon receipt of the response or after the twenty (20) day period has passed without a response, the complaint review committee shall review the complaint and the licensee's response, if any, and make a recommendation to the board whether the nature and quality of the allegations warrant dismissal, further investigation or the initiation of a hearing.

(d) In making its determination, the board shall consider whether the charges if proven would warrant sanction by the board.

(e) If the complaint involves the improper, inappropriate, or illegal prescribing of controlled substances, the board shall proceed under Section 4(2) of this administrative regulation.

(3) The board may at any time proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its own investigation.

(4) The filing of formal charges shall require the affirmative vote of a majority of the board.

(5) (a) If the board finds that allegations against a licensee are insufficient for initiation of a formal disciplinary procedure, it shall dismiss the matter and notify all interested parties.

(b) If the board determines that disciplinary proceedings are appropriate, the board shall set the matter for hearing and shall notify the licensee of the charges against him and the time and place of the hearing in accordance with KRS Chapter 13B.

(c) The board is also entitled to resolve the matter informally through mediation or negotiation. Any agreed order reached through mediation or negotiation shall be approved by the board and signed by the individual who is the subject of the complaint, the individual's attorney, and the chair of the board.

Section 4. [Any complaint or charge filed with the board shall be forwarded to the licensee involved and the licensee shall be given twenty (20) days to resolve the problem or to make a reply to the complaint. (2)] Investigations. (1) Upon the receipt of a complaint and following the expiration of the twenty (20) days provided for in Section 3(2) of this administrative regulation [subsection (1) of this section], the board or its appointed committee may cause an investigation to be made by an individual board member, by any investigation committee, or by any agent or representative appointed by the board. The board may also cause an investigation to be made on its own initiative at any time without a complaint.

(2) If a complaint involves the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

(a) Inform the Department of Kentucky State Police, the Office of the Attorney General, and the Cabinet of Health and Family services with three (3) days of the receipt of the complaint;

(b) Commence an investigation within seven (7) days of the filing of the complaint; and

(c) Complete the investigation and determine whether to proceed with adjudicatory proceedings against the respondent within 120 days of receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 5[3]. Commencement of Adjudicatory Proceedings. (1) Upon completion of the investigation referred to in Section 2(2) of this administrative regulation or after the expiration of the twenty (20) day period referred to in Section 2(1) of this administrative

regulation where an investigation is not made or whenever the board has completed an investigation made on its own initiative, the board may begin formal adjudicatory proceedings in accordance with KRS Chapter 13B.[the following procedure:]

(2) [(1) If it is determined that the facts alleged in the complaint or obtained from the investigation constitute grounds for disciplinary action against a licensee, a hearing shall be scheduled before the board on these allegations.] In any case in which the board has denied an application for a license or failed to renew a license, a hearing shall only be scheduled upon receipt by the board of a written request submitted by or on behalf of the person whose application for license was denied or not renewed.

Section 6. Temporary suspension. (1) The board chair or the board as a whole may issue an emergency order for the immediate temporary suspension of a license or certificate against which disciplinary action or an investigation is pending if it determines that there is a substantial likelihood that the licensee's practice constitutes a danger to patients or the public.

(2) The emergency order shall be made in accordance with KRS 13B.125 and shall be based upon a finding by the board that the emergency order is in the public interest and there is substantial evidence of immediate danger to the health, welfare, and safety of any patient or the general public.

(3) A licensee may appeal the emergency order by a written request to the board for an emergency hearing in accordance with KRS 13B.125 within thirty (30) days after receipt of the order.

Section 7. The board shall immediately submit all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services or any successor entity. [(2) Notice. The notice of hearing shall be issued by the chairman of the board and shall state:

(a) The time, date, and place of the hearing;

(b) The legal authority under which the hearing is to be held;

(c) The statutes or administrative regulations involved; and

(d) A short and plain statement of the complaint or charges which are being preferred and the remedy which is being sought. The notice shall be served by certified mail to the last known address of the party or parties not less than twenty (20) days before the date of the hearing.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to appear personally at the hearing, to be represented by counsel, to cross-examine witnesses appearing against them, and to produce witnesses on their own behalf. When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders, or other correspondence shall be served on such attorney; service on the attorney shall be considered as service on the party and the board shall be notified of any change in such attorney by the party.

(4) Hearing tribunal. Any member or members of the board who participated in the investigation of a complaint or charge against a licensee shall not sit on the board for adjudicatory purposes in connection with the same complaint or charge investigated. The chairman of the board or a hearing officer designated by the board shall preside over the hearing proceedings.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. (1) The board may hear testimony of any person who has information to offer bearing on the subject matter of such hearings. The board may ask any witness questions as may be required for a full and true disclosure of the facts.

(2) A hearing in a contested case involving possible disciplinary action against a licensee, shall proceed in the following order unless the board otherwise directs:

(a) The party filing the complaint or preferring the charges or the persons appointed or designated to present the evidence against the licensee may briefly state the substance of the charges and the evidence by which he expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise preferred may briefly state the substance of his defense and the evidence which he expects to offer in support of it.

(c) The party filing the complaint or otherwise preferring the

charges or the person(s) appointed or designated to present the evidence against the licensee shall have the burden of proof by a preponderance of the evidence and shall produce his evidence first; the party against whom a complaint has been filed or charges preferred may then produce his evidence. The board may alter the order of proof in any proceeding.

(d) The parties shall then be confined to rebuttal evidence, unless the board, in its discretion, permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the board for decision, or present oral arguments on the issues involved. In the arguments, the party filing the complaint or otherwise preferring the charges or the person appointed or designated to present the evidence against the licensee shall have the conclusion and the party against whom the complaint was filed or charges otherwise preferred shall have the opening.

(3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in subsection (2) of this section shall be reversed.

(4) In any contested case, the board shall as far as practical adhere to the following rules of evidence:

(a) Any evidence which would be admissible by circuit courts of the Commonwealth of Kentucky, shall be admitted in hearings before the board; evidence which would not be admissible by circuit courts of the Commonwealth of Kentucky may be admitted if the board deems it necessary for a full and true disclosure of the facts and the evidence would be of assistance to the board in determining the rights of the parties.

(b) Every party shall have the right to present oral testimony, documentary evidence, exhibits, and rebuttal evidence and conduct cross-examination as may be required for a full and true disclosure of the facts.

(c) Irrelevant, immaterial, or unduly repetitious evidence may be excluded and the board shall give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.

(d) The board may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the board's specialized knowledge; provided, however, the parties shall be afforded an opportunity to contest any facts noticed.

(e) Objections to evidentiary offers may be made and shall be noted in the record.

(f) When necessary to ascertain facts which cannot otherwise be proved, evidence not admissible under these administrative regulations may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(5) The parties to any hearing may agree to waive any of the procedural steps which would otherwise precede the reaching of a final decision by the board, but such waiver shall not be binding on the board.

Section 5. Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the board for final decision, the deliberations of the board shall be governed by the following principles:

(a) Ex parte investigations. Members of the board shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any board member may consult with other members of the board, and may have the aid and advice of one (1) or more personal assistants, including the assistance of counsel.

(b) Separation of functions. No member, officer, or employee of the board who is engaged in the performance of investigative or prosecuting functions for the board in a contested area shall, in that or a factually related case, participate or advise in the decision, except as a witness or counsel in the public hearing.

(c) Examination of evidence. The board shall personally consider the whole record or such portions of the record as may be cited by the parties, and the board's technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(d) The board may recess a hearing for the taking of additional

discovery and evidence as required.

(2) Record. The record shall include all pleadings, motions, exhibits, documentary, and testimonial evidence received or considered, a statement of matters officially noticed, and questions and offers of proof and rulings by the board. A recording of the oral proceedings shall be made by the board, but a written transcript shall not be required. Any party requesting a written transcript of the oral proceedings shall pay for the transcription and the copy.

(3) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the record. The final decision shall include findings of facts and conclusions of law and shall be signed by the president of the board.]

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held September 24, 2012, at 1:00 p.m. in Conference Room C located in the Office of the Attorney General; 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Beverley White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, phone (270) 834-8932, fax (270) 834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for processing complaints and disciplinary actions by the board.

(b) The necessity of this administrative regulation: KRS 311.410 authorizes the board to promulgate regulations to implement the provisions of KRS Chapter 311.390 to 510. KRS 218A.205 requires the board to establish a procedure for temporary suspension of a license. This administrative regulation establishes the procedures for complaints and temporary suspensions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.490 authorizes the board to take disciplinary action against a licensee after a hearing. KRS 218A.205, as enacted by General Assembly in 2012 (1st Extra. Sess.) Ky. Acts ch. 1, requires the board to temporarily suspend a licensee when the health or welfare of the public is endangered. This administrative regulation sets for the procedures for the complaint and temporary suspension processes.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for disciplinary action and temporary suspension by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This administrative regulation establishes the requirement processing complaints against licensees.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to comply with the requirements of 2012 (1st Extra. Sess.) Ky. Acts ch. 1.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for disciplinary actions and temporary suspensions.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be followed in the disciplinary and suspension processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons maintain a podiatric license 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: Licensees will follow the procedures in the administrative regulation when a complaint is received.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): There are no costs for following the requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The health and welfare of the public will be protected from improper prescribing and dispensing of controlled substances.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons who have a complaint with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.205; 311.410; 311.490.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

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

301 KAR 2:030. Commercial guide license.

RELATES TO: KRS 150.170, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(11), 150.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide's license which allows the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to promulgate administrative regulations requiring a commercial guide applicant to present proof of qualifications as established by the department. This administrative regulation establishes the requirements for obtaining and using a commercial guide's license.

Section 1. Definitions. (1) "Commercial guide's license" means a license issued by the department that allows a person to provide services for remuneration, in directing, instructing, aiding, or leading others in the taking of fish or wildlife in the field or on the water.

(2) "Direct supervision" means supervision in an approximate vicinity sufficient to provide immediate medical assistance.

(3) "Guide helper" means a person who does not possess a commercial guide's license, but is directly supervised by a commercial guide during the taking of fish and wildlife.

Section 2. Commercial Guide and Guide Helper Requirements.

(1) A person shall not be a commercial guide in Kentucky without first obtaining a commercial guide's license from the department.

(2) A commercial guide applicant shall:

(a) Complete in entirety and submit to the department a Commercial Guide License Application on a form provided by the department;

(b) Be at least eighteen (18) years old;

(c) If applying to guide others for fishing, possess:

1. The applicable Kentucky fishing license;

2. A Kentucky trout permit if applicable; and

3. Proof of completion of a boater education course;

(d) If applying to guide others for hunting, possess:

1. A Kentucky hunting license, if applicable;

2. Any applicable Kentucky hunting permit or tag;

3. Proof of completion of a hunter education course; or

4. A valid hunter education exemption permit; and

5. Proof of completion of a boater education course if guiding hunters by boat;

(e) Not have been convicted of a Class A Misdemeanor in the last three (3) years;

(f) Not have been convicted of a state or federal fish and wildlife violation in the last three (3) years;

(g) Not have been convicted of a state or federal felony;

(h) Not be registered as a sex offender in any state's sex offender registry;

(i) Provide results of a current National Crime Information Center background check through the Kentucky State Police; and

(j) Provide proof of certification in:

1. Cardiopulmonary resuscitation (CPR); and

2. First aid.

(3) A commercial guide applicant who possesses a valid U.S. Coast Guard Captain's license may submit a copy of this license in lieu of proof of:

(a) Completion of a boater education course;

(b) Certification in CPR; and

(c) Certification in first aid.

(4) A commercial guide may use a guide helper if the guide helper is under the direct supervision of the commercial guide, except direct supervision is not required on lands owned or leased by the guide.

(5) A fishing guide helper shall:

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(a) Possess an applicable Kentucky fishing license;
(b) Possess a Kentucky trout permit if applicable; and
(c) Be accompanied in the boat by a licensed commercial guide.

(6) Unless exempted by KRS 150.170, a hunting guide helper shall possess:

(a) An applicable Kentucky hunting license;
(b) Any applicable Kentucky hunting permit or tag;
(c) Proof of completion of a hunter education course; or
(d) A valid hunter education exemption permit; and
(e) Proof of completion of a boater education course if guiding hunters by boat.

(7) A commercial guide helper who works beyond the direct supervision of a commercial guide shall possess proof of certification in:

(a) CPR; and
(b) First aid.

(8) A commercial guide or guide helper shall not participate in the taking of fish or wildlife beyond the applicable daily statewide bag and creel limits for a person being guided, except that a commercial guide or guide helper may take a personal daily bag or creel limit of fish or wildlife while guiding.

(9) A commercial guide or commercial guide helper who is required to have CPR and first aid certification shall keep all certifications valid and up to date if the commercial guide is currently permitted by the department.

Section 3. Permit Denial and Revocation. (1) The department shall revoke a commercial guide's license of a person who is convicted of a:

(a) State or federal fish and wildlife violation shall have the permit revoked for a period of three (3) years;
(b) Class A Misdemeanor for a period of three (3) years;
(c) State or federal felony in perpetuity; and
(d) A sex offense that results in the person being required to be listed in a state's sex offender registry in perpetuity.

(2) An individual whose commercial guide's license has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 4. Incorporation by Reference. (1) "Commercial Guide License Application", 2012 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [KRS 150.170; 150.175, 150.412 STATUTORY AUTHORITY: KRS 150.015, 150.025, 150.190 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 authorizes the department to protect and conserve the wildlife of the Commonwealth. KRS 150.025 authorizes the department to promulgate administrative regulations to protect fish and game from overharvest. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to establish the requirements for a commercial guide license and a guide helper.

Section 1. Definitions. (1) "Commercial guide" means a person who advertises or offers their services for remuneration to direct, instruct (excluding seminars), or aid others in taking wildlife.

(2) "Creel limit" is defined in 301 KAR 1:201.

(3) "Direct supervision" means supervision in the approximate vicinity sufficient to provide immediate medical assistance.

(4) "Guide helper" means a person without a commercial guide license who is supervised by a commercial guide while involved in the taking of wildlife.

(5) "Take" is defined in KRS 150.010(37).

(6) "Wildlife" is defined in KRS 150.010(41).

Section 2. Commercial Guide License Requirements and Application. (1) A person wanting to commercially guide for wildlife shall possess a commercial guide license provided by the depart-

ment.

(2) A commercial guide license is valid for one (1) calendar year.

(3) An applicant of a commercial guide license shall:

(a) Be eighteen (18) years of age or older;
(b) Have not been convicted of any fish or game violations during the previous three (3) years;

(c) Possess all necessary fishing licenses and permits in order to receive a commercial guide license for fishing; and

(d) Possess all necessary hunting licenses and permits in order to receive a commercial guide license for hunting.

(4) An applicant wanting to apply for a commercial guide license shall submit to the department:

(a) An application for a commercial guide license to the Director's Office, Division of Law Enforcement, #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(b) A signed affidavit from two (2) separate character references documenting the applicant is experienced in the field in which they are guiding and that the applicant is of good moral character and in good physical condition;

(c) Proof of a National Crime Information Center (NCIC/LINK) background check through the Kentucky State Police;

(d) Effective January 1, 2010, proof of certification in cardiopulmonary resuscitation (CPR) and first aid. Certifications shall be maintained as specified by the certifying organization;

(e) Proof of completion of a boater education course when applying for a commercial guide license for fishing. An applicant may complete the online boater education course available by accessing the department's Web site at <http://fw.ky.gov> to satisfy this requirement; and

(f) Proof of completion of a hunter education course, or a valid hunter education exemption permit available by accessing the department's Web site at <http://fw.ky.gov>, when applying for a commercial guide license for hunting. A commercial guide applicant who guides hunters by boat shall also submit proof of completion of a boater education course or the online boater education course.

(5) A commercial guide who has possessed a commercial guide license for the past three (3) consecutive years shall not be required to submit the two (2) character reference affidavits, as established in this Section of this administrative regulation, when applying for a commercial guide license.

(6) A commercial guide applicant who possesses a valid United States Coast Guard Captain's License ("six pack") and will guide on a United States Coast Guard regulated waterway may submit a copy of this license in lieu of the boater education course requirements, as established in this section when applying for a commercial guide license. Effective January 1, 2010, a commercial guide applicant who possesses a valid U.S. Coast Guard Captain's License (six pack) and will guide on a U.S. Coast Guard regulated waterway may submit a copy of this license in lieu of the CPR and first aid requirements, as established in this section, when applying for a commercial guide license.

Section 3. Guide Helper. (1) A commercial guide may utilize guide helpers provided they are under the direct supervision of the commercial guide, except on lands owned or leased by the commercial guide.

(2) A fishing guide helper shall:

(a) Have in possession all necessary fishing licenses and permits; and

(b) Be accompanied in the boat by a commercial guide;

(3) A hunting guide helper shall have in possession:

(a) All necessary hunting licenses and permits;

(b) 1. A hunter education card; or

2. A valid hunter education exemption permit; and

(c) A boater education card if helping a commercial guide by boat.

(4) Effective January 1, 2010, a guide helper wishing to work beyond the direct supervision of the commercial guide shall be required to have cardiopulmonary resuscitation (CPR) and first aid certification. Certifications shall be maintained as specified by the certifying organization.

Section 4. Commercial Guide License Prohibitions and Revocation. (1) A commercial guide or guide helper shall not participate in the taking of fish or game beyond the bag limit or creel limit of the person or persons being guided except that a commercial guide or guide helper may take their daily bag or creel limit of fish or game while guiding.

(2) The department shall revoke and not renew the commercial guide license, for a period of three (3) years, of a person convicted of any state or federal fish or game violation.

(3) An individual whose commercial guide license has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 5. Incorporation by Reference. (1) "Commercial Guide License Application", 07/18/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 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 administrative regulation establishes the requirements for obtaining and using a commercial guide's license and defines the parameters for a guide helper.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for a commercial guide and to ensure they are adequately trained with regard to education and safety courses, CPR, and first aid.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide's license which allows the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to promulgate administrative regulations requiring a commercial guide applicant to present proof of qualifications as established by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of the statutes by establishing the requirements for a commercial guide license and a

guide helper.

(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 strengthens the current regulation by better defining the situations for denial or revocation of a permit, removing the affidavit requirements, and clarifying the use of a guide helper.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure that the commercial guides are responsible professionals that possess minimum standards of compliance and possess adequate training in safety, education, and training.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who commercially guide for wildlife, including fish, will be affected by this amendment. There are approximately 200 commercial guides 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: Commercial guides shall provide proof of a NCIC/LINK background check through Kentucky State Police, meet minimum standards of compliance for training and safety, with fish and wildlife laws, and not have a Class A Misdemeanor or sexual offender conviction history.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not increase any fees charged to a commercial guide. The permit cost remains at \$150 for residents and \$400 for nonresidents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial guides and guide helpers will be more clearly informed of the requirements necessary to obtain a commercial guide license. In complying with these amendments, the commercial guide industry will benefit by being represented by people who have the necessary background to provide adequate service to the public in a safe manner.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: New fees were not established with this amendment.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals desiring to receive a commercial guide license are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Division of Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide's license which allows the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to promulgate administrative regulations requiring a commercial guide applicant to present proof of qualifications as established by the department.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate increased revenue for the department during the first year. If anything, by strengthening the standards, revenue may decrease slightly. In the past, this administrative regulation generates approximately \$30,000

(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 \$30,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? The cost to administer this program will not increase as a result of this amendment for the first year. An accurate cost estimate to administer this program is unknown. However, it is assumed that revenue will offset administration costs.

(d) How much will it cost to administer this program for subsequent years? Subsequent year costs should remain the same. See 3(c) above.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

RELATES TO: KRS 150.010, 150.240, 150.620, 150.640, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.240(2), 150.620

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. KRS 150.240(2) authorizes the department to promulgate administrative regulations to establish permits for public or commercial shooting areas. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas. This administrative regulation establishes requirements for the use of the Otter Creek Outdoor Recreation Area.

Section 1. Definitions. (1) "Camp Piomingo" means a designated area within Otter Creek Outdoor Recreation Area that is leased from the department for an outdoor summer camp.

(2) "Event" means a planned gathering of thirty (30) or more

people twelve (12) years or older on the area at the same time.

(3) [(2)] "Shooting range" means a department built:

(a) Firearm target range facility in which a person is required to shoot through a metal tube at various stationary targets; or

(b) Archery range facility in which a person shoots at stationary targets from specified locations.

Section 2. General Area Use Restrictions. (1) A person, except for permit exempt individuals, shall possess and carry:

(a) A valid daily or annual Area Entry Permit when using the Otter Creek Outdoor Recreation Area; and

(b) A valid daily or annual Special Activities Permit if:

1. Biking on designated trails;

2. Horseback riding on designated trails; or

3. Using designated shooting range facilities.

(2) The department shall enter into a lease agreement with Camp Piomingo to establish an annual flat-rate fee which allows permit-exempt use of the area by Camp Piomingo:

(a) Campers; and

(b) Staff.

(3) A person shall not be on the area when the area is closed, except for:

(a) Registered campers at the designated campground area;

(b) Authorized hunters; or

(c) A special activity or event authorized by the department.

(4) [(3)] The department shall notify the public when the area is closed by:

(a) A pre-recorded phone message;

(b) An internet posting; and

(c) Visible signage on the area.

(5) [(4)] A person shall park vehicles in designated parking areas only.

(6) [(5)] A person who is hunting, fishing, trapping, or boating on the area shall follow all applicable administrative regulation requirements pursuant to 301 KAR Chapters 1, 2, 3, and 6;

(7) [(6)] The area shall be closed to the general public, except for authorized hunters, during:

(a) A firearms deer quota hunt pursuant to 301 KAR 2:178; and

(b) Spring turkey season, pursuant to 301 KAR 2:142.

(8) [(7)] The following activities are prohibited without prior department authorization:

(a) Cutting or removing live or standing trees, shrubs, or other vegetation;

(b) Riding motorized all-terrain or off-highway vehicles;

(c) Allowing unleashed dogs, except at times and areas designated by the department;

(d) Camping, except in designated areas;

(e) Setting fires, except for attended fires:

1. In designated camping areas; or

2. In grills at designated picnic areas.

(f) Blocking a roadway or gate;

(g) Igniting fireworks or rockets;

(h) Participating in a commercial activity or endeavor;

(i) Damaging or destroying crops or wildlife food plots;

(j) Damaging or defacing buildings, structures, signs, or other property;

(k) Hunting in an area closed to hunting;

(l) Tethering a horse to a tree, shrub or sign; or

(m) Discharging a firearm:

1. Within 100 yards of a building;

2. Except on a designated firearm shooting range; or

3. Except during an authorized hunting season in an authorized hunting area.

Section 3. Trail Requirements. (1) A person shall only ride a horse or bike on designated trails or roadways.

(2) A person shall not possess a wheeled vehicle other than a bike on a designated bike trail, except for department authorized maintenance activities.

(3) A person shall not ride a bike or a horse on designated trails that have been temporarily closed by the department due to:

(a) Hunting activity;

(b) Wet conditions;

(c) Trail maintenance activity;

- (d) Downed trees;
- (e) Unsafe conditions; or
- (f) An event authorized by the department.

(4) The department shall provide the public with a reasonable notification system for temporary trail closures that includes:

- (a) A pre-recorded phone message;
- (b) An internet posting; and
- (c) Visible signage on the area.

Section 4. Event Permits. (1) A group of people conducting an event shall not meet on the area without first applying for and obtaining a completed Event Permit from the department.

(2) A person, on behalf of the people involved with an event, shall apply for an Event Permit at least thirty (30) days in advance of the planned event.

(3) The application for an Event Permit shall be on a form provided by the department.

(4) The department shall deny an Event Permit if the planned activity or event:

- (a) Is prohibited pursuant to this administrative regulation; or
- (b) Is in conflict with:

1. Another Event Permit activity already authorized by the department;

- 2. A hunting season;
- 3. A quota hunt; or
- 4. Recreational use of the area.

Section 5. Incorporation by Reference. (1) "Otter Creek Event Permit Application", 2011 Edition, is incorporated by reference.

(2) The permit application may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, 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 October 1, 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) 564-3400, 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 restrictions and requirements for public use of Otter Creek Outdoor Recreation Area (OCORA) in Meade County, Kentucky.

(b) The necessity of this administrative regulation: It is also necessary in order to effectively manage multiple recreational uses on the area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the depart-

ment to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will allow the department to effectively manage the area in accordance to the statutes listed above in (1)(c).

(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 defines Camp Piomingo, an outdoor summer camp operated within the borders of OCORA. It also requires an agreement be made between the Department and Camp Piomingo establishing a flat-rate fee to be paid to the department which will allow permit-exempt use of the area by campers and staff of Camp Piomingo.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow for permit-exempt use of OCORA by campers and staff of Camp Piomingo.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is currently unknown how many people will visit the area in a given year, however, Camp Piomingo representatives will be affected by this amendment.

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

(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: Representatives of Camp Piomingo will need to enter into an agreement with the department for a flat-rate fee payment in lieu of individual user permits for each camper and staff member.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost Camp Piomingo an annual fee paid to the department in order to operate in lieu of individual user permits that are required by all other users of the area. This annual fee will be negotiated and written into a signed agreement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Camp Piomingo staff and campers will benefit from the agreement with the department by not having to deal with the inconvenience and difficulty of obtaining daily or annual user permits.

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

(a) Initially: The department estimates it will require \$300,000 to \$400,000 per year to operate.

(b) On a continuing basis: The department estimates it will require \$300,000 to \$400,000 per year to operate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The department will fund fish and wildlife management and related activities from the State Game and Fish Fund. The department will fund the management of non-traditional recreational uses of the area from user permit fees established in 301 KAR 3:022.

(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 be necessary for the department to establish an agreement with Camp Piomingo for an annual flat-rate fee for the use of OCORA by Camp Piomingo staff and campers.

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This regulation requires the department and Camp Piomingo to enter into an agreement for a flat-rate fee to be paid to the department for the use of OCORA by campers and staff members.

(9) TIERING: Is tiering applied? Yes, tiering is applied because horseback riders, trail bikers, and shooting range participants will be required to purchase an additional Special Activities Permit to pursue these activities on the area.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All of the Divisions of the Department of Fish and Wildlife Resources will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas.

(3) 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 \$236,000.

(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? It is assumed that revenue in subsequent years will be similar or slightly higher as more people find out about the area.

(c) How much will it cost to administer this program for the first year? Between \$300,000 and \$400,000.

(d) How much will it cost to administer this program for subsequent years? It is assumed that the cost to administer this program in subsequent years will be similar to the first year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Department of Agriculture Office of Consumer and Environmental Protection Division of Environmental Services (Amendment)

302 KAR 29:020. General provisions.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for record-keeping, the storage and handling of restricted-use pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.

(1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides;

(a) Brand, amount, and type of restricted use pesticide sold;

(b) Buyer's name and address;

(c) Certification number of the purchaser; and

(d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. All commercial and noncommercial structural applicators who apply pesticides or any termiticides shall maintain the following records:

(a) Name and address of person receiving services and location of performance of services;

(b) Brand or product name of pesticides applied;

(c) Date of application;

(d) Type of area treated;

(e) Name of applicator; and

(f) Total amount of each pesticide applied, excluding paste baits.

(3) Retention. All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one or more persons may have used or applied pesticides.

(4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation applies to all persons who have occasion to store pesticides.

(2) Standards for storage:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;

(b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;

(d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions; and

(e) Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison."

(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 USC 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 USC 14.

Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

Section 6. Registered Pesticide Equipment Identification. (1) Each branch or pesticide applicator shall at all times have its vehicles, which are actively and regularly engaged in service work, marked for easy identification. The identification shall consist of the letters "L.P.C.O." two (2) inches high and followed by the company number of the business, as assigned by the department. The identification shall be placed in a highly visible location.

(2) The vehicle owner shall notify the department if a vehicle registered under KRS 217B.565 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the identification if the vehicle is permanently removed from active pesticide application or is permanently transferred out of the state.

~~[Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.]~~

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012, 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 Close of Business October 1, 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 establishes the licensing requirements for the structural pest control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for structural pest control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation makes clear the non-commercial applicators must comply with record keeping requirements.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements, including recordkeeping requirements.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements. The amendment makes clear that both commercial noncommercial licensure includes the requirement to keep the same records.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the requirements for noncommercial applicators clearer for recordkeeping requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 2202 total 7A licenses, with 1661 7B licenses holders. The KDA has issued 355 total noncommercial licenses.

(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: Noncommercial applicators will be required to keep records of applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change makes the requirements easier to understand, as a reading before might have led a noncommercial applicator to think the recordkeeping requirements did not apply to them.

(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: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.050

(3) 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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Department of Agriculture

Office of Consumer and Environmental Protection

Division of Environmental Services

(Amendment)

302 KAR 29:060. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. Unless otherwise specified, the certifications provided for in this chapter shall be valid for three (3) years and must be renewed and maintained in accordance with Section 7 of this administrative regulation.

Section 2. Types of Certification. (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover all persons using or supervising the use of pesticides for structural pests only, in, on, or around food-handling establishments, human dwellings, educational facilities, health care centers, industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. Industrial, institutional, structural, and health-related pest control certification shall be divided into the following subcategories:

(a) Structural pest control certification shall cover the use of pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation. Persons certified

under this section shall be exempt from the certification requirements of 302 KAR Chapters 27 and 28 if using or supervising the use of pesticides for the control of structural-invading pests in areas adjacent to or outside any structure being treated by the person pursuant to the provisions of 302 KAR Chapter 29.

(b) Integrated pest management certification shall cover an environmentally-sound approach to pest management in schools and health care facilities with the goal of the judicious use of pesticides.

(c) Structural fumigation certification shall cover the use of pesticides in the form of poisonous gases.

(2) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of pesticides in management and control of pests in public health programs.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in this administrative regulation. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation and the specific standards of competency in Section 5 of this administrative regulation for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed "Structural Pest Control License Form" specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to humans, and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and

(g) The proper selection and use of personal protective equipment for the handling and application of pesticides;

(3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:

- (a) Weather and other climatic conditions;
- (b) Types of terrain, soil, or other substrata;
- (c) Presence of fish, wildlife, and other nontarget organisms; and

(d) Drainage patterns;

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and

(b) Pest maturation and development as it may relate to the problem of identification and control.

(5) Pesticides, including consideration of the following factors:

- (a) Types of pesticides;
- (b) Types of pesticide formulations;
- (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures.

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each; and

(b) Uses, maintenance, and calibration of equipment.

(7) Application techniques; factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(c) Prevention of drift and pesticide loss into the environment.

(8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:

(a) Structural pest control. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition. ~~[Because school and health-related pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.]~~

(b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of this 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.

(c) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the

dangers involved and the safety precautions established by these administrative regulations and by good operating practice. For those persons holding both a category 7(a) and 7(c) certification, the expiration and renewal dates of the 7(c) certification shall be the same as the corresponding 7(a) certification regardless of its original issue date.

(2) Category 8. Public health. Each person with certification in category 8 in effect on the effective date of this administrative regulation shall be granted certification in category 7(a) and category 7(b) with an expiration date of December 31, 2012.

(3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

Section 6. License Examination. Structural. The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

Section 7. Certification Maintenance. To maintain a category 7(a), or category 12 certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training, approved by the department, in the use and application of pesticides. To maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to maintain a category 7(c) certification, each person certified in this category shall in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(c) certification, an additional three (3) category specific continuing education units shall be required. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, ~~2015~~[2012]. Credit shall be given in full continuing education unit increments only. ~~[All persons holding certification in any category shall begin a new three (3)-year training period beginning January 1 after the effective date of this administrative regulation.]~~

Section 8. Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be permitted to perform any type of regulated activity until the license is reactivated.

(b) Employee commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the

department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form", is incorporated by reference.

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

JAMES R. COMER, Commissioner

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2012, 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 Close of Business October 1, 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 establishes the licensing requirements for the structural pest control industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 217B.050 by establishing licensure requirements by creating different categories for structural pest control.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to comply with KRS 217B.050 by clearly stating the requirements for structural pest control licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation extends the certification maintenance time until December 2015. It also removes unneeded and confusing material.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(c) How this amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with KRS 217B.050 by establishing licensure requirements.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation amendment will make the administration of issuing renewals easier for KDA staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: : Approximately 2,202 persons currently hold certifications in structural pest control.

(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 individuals will need to take no action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA believes that no additional costs will be incurred by the regulated individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change makes the requirements easier to understand.

(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: Federal EPA funds 51% of the program, and pesticide product registration fees fund 49%.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee has been established directly or indirectly through this amended regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, Division of Regulation and Inspection.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.050

(3) 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 fiscal changes will occur.

(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 fiscal changes will occur.

(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 fiscal changes will occur.

(c) How much will it cost to administer this program for the first year? No changes in spending will occur.

(d) How much will it cost to administer this program for subsequent years? No changes in spending will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 10:001. Definitions for 401 KAR Chapter 10.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100 - 224.70-140, 224.71-100 - 224.71-145, 224.73-100 - 224.73-120, 40 C.F.R. 136[EQ 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution.[EQ 2008-507 and 2008-531, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions. (1) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50} , of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for one (1) hour without causing an unacceptable harmful effect.

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC_{50} , by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(7) "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100(3); or

(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. [Include]Treatment requirements; [.] operating procedures; and [.] practices to control site run-off, pollution of surface water

and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(9) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(10) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed for ninety-six (96) hours without causing an unacceptable harmful effect.

(11) "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(12) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(13) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.

(14) "Coal remining operation" means:

(a) A surface coal mining operation, which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977; and

(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.

(15) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(16) "Concentrated animal feeding operation" means one (1) of the following:

(a) "Large concentrated animal feeding operation" as defined in subsection (45) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (50) of this section; or

(c) "Small concentrated animal feeding operation" as defined in subsection (76) of this section.

(17) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and disinfection.

(18) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(19) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents that represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(20) "Day" means a twenty-four (24) hour period.

(21) "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(22) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment Cabinet.

(23) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(24) "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential

facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(25) "Domestic water supply" or "DWS" means surface waters that with conventional domestic water supply treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations promulgated pursuant to ~~under~~ the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j-26.

(26) "Effluent limitations" is defined ~~by~~^{at} KRS 224.01-010(12).

(27) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(28) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(29) "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(30) "Eutrophication" means the enrichment of a surface water with nutrients nitrogen and phosphorus resulting in adverse effects on water chemistry and the indigenous aquatic community. Resulting adverse effects on water chemistry manifest by daily dissolved oxygen supersaturation followed by low dissolved oxygen concentrations and diurnal increase in pH. Resulting adverse effects on the indigenous aquatic community include:

(a) Nuisance algae blooms;

(b) Proliferation of nuisance aquatic plants;

(c) Displacement of diverse fish or macroinvertebrate community by species tolerant of nutrient-enriched environments; or

(d) Fish kills brought on by severe, sudden episodes of plant nutrient enrichment ~~by the discharge or addition of a nutrient.~~

(31) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

(32) "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

(33) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(34) "°F" means degrees Fahrenheit.

(35) "General permit" means a KPDES permit authorizing a category of discharges pursuant to ~~under~~ KRS Chapter 224 within a geographical area, issued pursuant to ~~under~~ 401 KAR 5:055.

(36) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(37) "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

(38) "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

(39) "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

(40) "Indigenous aquatic community" means naturally occurring aquatic organisms including bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(41) "Inhibition concentration of twenty-five (25) percent" or "IC₂₅" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

(42) "Intermittent water" means a stream that flows only at certain times of the year.

(43) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring, and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(44) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW,

or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(45) "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(4), effective July 1, 2007.

(46) "LC₁" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(47) "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(48) "Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(49) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(50) "Medium concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(6), effective July 1, 2007.

(51) "µg/L" means micrograms per liter, same as ppb, assuming unit density.

(52) "mgd" or "MGD" means million gallons per day.

(53) "Milligrams per liter" or "mg/L" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(54) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(55) "Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(56) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(57) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(58) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(59) "Nonpoint" means a~~any~~ source of pollutants not defined by a point source.

(60) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of waters of the Commonwealth.

(61) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

(62) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(63) "pCi/L" means picocuries per liter.

(64) "PCR" means primary contact recreation.

(65) "Point source" is defined by 33 U.S.C. 1362(14). The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(66) "POTW" means publicly-owned treatment works as defined ~~by~~ⁱⁿ KRS 224.01-010.

(67) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(68) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(69) "Propagation" means the continuance of a species by

successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(70) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the Clean Water Act, 33 U.S.C. 1251-1387, to control point sources of pollution within a planning area.

(71) "Remined area" means only that area of a coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(72) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(73) "SCR" means secondary contact recreation.

(74) "Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(75) "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that ~~which~~ occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(76) "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(9), effective July 1, 2007.

(77) "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(78) "Standard" means a water quality standard.

(79) "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

(80) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(81) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(82) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(83) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.

(84) "U.S. EPA" means the United States Environmental Protection Agency.

(85) "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(86) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(87) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2012, five workdays prior to the hearing,

of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: Peter Goodmann, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Peter.Goodmann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide definitions for terms used throughout the chapter so that the other regulations in the chapter may be properly interpreted and enforced.

(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 strikes the citation to an outdated Executive Order and clarifies the definition of "eutrophication." Other minor amendments are proposed to comply with regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to clarify the meaning "eutrophication." Other minor amendments are proposed to comply with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. This amendment will add in the understanding of the water quality standards regulations contained in 401 KAR Chapter 10. Other minor amendments are proposed to comply with regulation drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment was necessary to clarify the meanings of terms used throughout the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will understand the terms used throughout 401 KAR Chapter 10.

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

(a) Initially: There are no initial costs as a result of amending this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using these regulations will be able to find definitions for terms used throughout the chapter.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

3. 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 will be no cost.

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 10:026. Designation of uses of surface waters.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100 -224.73-120[~~EO-2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for

the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources.[~~EO-2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

Section 1. Scope of Designation. (1) Surface waters listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1) except as specified in 401 KAR 10:031, Sections 5 and 8, or until redesignated in accordance with the procedures of this administrative regulation.

(2) Designated uses are:

(a) Warm water aquatic habitat;

(b) Cold water aquatic habitat;

(c) Primary contact recreation;

(d) Secondary contact recreation;

(e) Domestic water supply; and

(f) Outstanding state resource water.

(3) Listed waters shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 10:031, Section 2, unless the cabinet grants an exception pursuant to 401 KAR 10:031, Section 10 or 11.

(4) Outstanding state resource waters may have unique water quality characteristics that shall be protected by additional criteria established in 401 KAR 10:031, Section 8.

Section 2. Redesignation of Surface Water Uses. (1)(a) Surface waters may be redesignated only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation.

(b) Before redesignating a surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective best management practices for non-point source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use;

(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in the attainment of the use;

(e) Physical conditions related to the natural features of the surface water, but unrelated to water quality, preclude attainment of the aquatic life use, such as the lack of a proper substrate, cover, flow, depth, pools, or riffles; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by the guidelines in Interim Economic Guidance for Water Quality Standards Workbook, EPA, March 1995.

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(5) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 10:029 and 10:030.

Section 3. Documentation for Redesignations. (1)(a) A person may request redesignation of surface water uses by petition to the cabinet.

(b) The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2)(a) The cabinet may propose redesignations of surface water uses.

(b) The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation to support the redesignation of a surface water of the Commonwealth shall be:

(a) A United States Geological Survey 7.5 minute topographic map or its equivalent showing those surface waters to be redesignated, with a description consisting of a river mile index with existing and proposed discharge points;

(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;

(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;

(f) The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters.

1. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed.

2. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of [any] unique native biota shall be documented;

(h) The proposed designated uses for the surface water in question; and

(i) An explanation of the irretrievable person-induced, or natural conditions that preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional con-

trols necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources.

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing the following information:

(a) The name and address of the petitioner;

(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed dischargers;

(c) The proposed use redesignations;

(d) A brief abstract of the supportive documentation, which demonstrates that the redesignation is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use;

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and

(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables in this administrative regulation [below] are the use designations for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations are listed in table A of this section.

Table A: Use Designation Symbols	
WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, applicable at existing points of public water supply intake
OSRW	Outstanding State Resource Water

(2)(a) Surface waters not specifically listed in this section are designated for the uses of warm water aquatic habitat, primary contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(b) Domestic water supply criteria in 401 KAR 10:031, Section 6, are implemented at locations listed in Table B in this paragraph.

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Name	Description	County
BIG SANDY RIVER BASIN		
Elkhorn City Water Department	Mile 13.7 of Russell Fork	Pike
Paintsville Utilities Commission	Mile 38.9 of Levisa Fork	Johnson
Louisa Municipal Water Works	Mile <u>27.35</u> [0.6] of Levisa Fork	Lawrence
Prestonsburg City Utilities Commission	Mile <u>84.3</u> [57.5] of Levisa Fork	Floyd
Pikeville Water Works/US Filter	Mile <u>117.8</u> [88.2] of Levisa Fork	Pike
Martin County Water District #1	Mile 23.8 of Tug Fork	Martin
US Filter/Southern Water & Sewer District	Mile 65.4 of Levisa Fork	Floyd
Jenkins Water Works	Mile 0.2 of Little Elkhorn Creek (Elkhorn Lake)	Letcher
Mountain Water District	Mile 4.6 of Russell Fork	Pike
Martin County Water District #1	Mile 1.35 of Lick Branch (Crum Reservoir) [23.8 of Tug Fork]	Martin
Jenkins Water Works	Mile <u>23.8</u> [24.4] of Elkhorn Creek	Letcher
Little Sandy River Basin		
Grayson Utility Commission	Mile <u>39.03</u> [40.1] of Little Sandy River	Carter
Greenup Water Plant	Mile 0.7 of Little Sandy River	Greenup
Rattlesnake Ridge Water District	Mile 57.93 of Little Sandy River (Grayson Lake)	Elliott
Tygarts Creek Basin		
Olive Hill Water Works	Mile 2.2 of Perry Branch (Olive Hill Reservoir)	Carter
Olive Hill Water Works	Mile <u>78.9</u> [81.4] of Tygarts Creek	Carter
Upper Cumberland River Basin		

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Water Service Corporation of KY	Mile 3.2 of Little Yellow Creek (Fern Lake)	Bell
Somerset Water Service	Mile 513.6 of Cumberland River (Lake Cumberland)	Pulaski
Corbin City Utilities Commission	Mile <u>21.45</u> [47.3] of Laurel River (City Reservoir)	Laurel
Burnside Water Company	Mile 517.6 of Cumberland River (Lake Cumberland)	Pulaski
Albany Municipal Water Works Plant A	Mile 7.0 of Indian Creek (Lake Cumberland)	Clinton
Monticello Water & Sewer Commission	Mile 502.2 of Cumberland River (Lake Cumberland)	Wayne
London Utility Commission	Mile 1.2 of Indian Camp Creek (Laurel River Reservoir)	Laurel
Harlan Municipal Water Works	Mile 0.2 of Poor Fork	Harlan
Mt Vernon Municipal Water Works	Mile 3.3 of Renfro Creek (Lake Linville) (emergency use only)	Rockcastle
<u>Laurel County Water Department #2</u>	<u>Mile 4.9 of Craig Creek (Laurel River Lake)</u>	<u>Laurel</u>
Laurel County Water Department #2	Mile <u>27.95</u> [23.9] of Laurel River (Dorthea Dam) (emergency use only)	Laurel
McCreary County Water District Plant A	Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)	McCreary
Burkesville Municipal Water Works	Mile 427.05 of Cumberland River	Cumberland
Mckee Municipal Water Works	Mile 2.3 of Bills Branch (Mckee City Reservoir)	Jackson
Williamsburg Water Works	Mile <u>589.7</u> [584.15] of Cumberland River	Whitley
Jamestown Municipal Water Works	Mile <u>3.75</u> [3.9] of Greasy Creek Branch (Lake Cumberland)	Russell
<u>Jamestown Municipal Water Works</u>	<u>Mile Point 4.6 of Greasy Creek Branch (Lake Cumberland due to the lowering)</u>	<u>Russell</u>
Jackson County Water Association Inc	Mile 2.1 of Flat Lick Creek (Beulah Lake)	Jackson
Knox County Utility Commission	Mile 642.61 of Cumberland River	Knox
Wood Creek Water District	Mile 7.2 of Wood Creek (Wood Creek Lake)	Laurel
Cumberland Water Works	Mile 25.2 of Poor Fork	Harlan
Pineville Water System	Mile 3.2 of Cannon Creek (Cannon Creek Lake)	Bell
Benham Water Works	Mile 3.5 of Looney Creek	Harlan
Woodson Bend Resort	Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)	Pulaski
Barbourville Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Lake)	Laurel
<u>Barbourville Utility Commission</u>	<u>Mile 17.5 of Laurel River (main intake)</u>	<u>Laurel</u>
Cawood Water District	Mile <u>10.1</u> [44.0] of Martins Fork	Harlan
[Cumberland County Water District	Mile 419.7 of Cumberland River	Cumberland
Ky Parks-Cumberland Falls	Mile 562.5 of Cumberland River	Whitley]
Barbourville Utility Commission	Mile 635.5 of Cumberland River	Knox
Albany Municipal Water Works Plant B	Mile <u>3.9</u> [6.7] of Indian Creek (Lake Cumberland)	Clinton
McCreary County Water District Plant B	Mile <u>31.3</u> [34.9] of South Fork Cumberland River (Lake Cumberland)	McCreary
Evarts Municipal Water Works	Mile 0.1 on UT of Bailey Creek. UT at mile 0.6	Harlan
Evarts Municipal Water Works	Mile 1.0 of Bailey Creek	Harlan
Bell County Forestry Camp	Mile 0.2 of Bear Creek (Chenoa Lake)	Bell
<u>Stanford Water Works</u>	<u>Mile 58.1 Buck Creek (Buck Creek Lake)</u>	<u>Lincoln</u>
Licking River Basin		
Millersburg Municipal Water Works	Mile 78.1 [43.3] of Hinkston Creek	Bourbon
Paris Municipal Water Works	Mile 16.7 of Stoner Creek	Bourbon
Northern Ky Water Service District Plant A	Mile <u>4.55</u> [4.8] of Licking River	Kenton
Mt Sterling Water & Sewer System	[Mile 36.4 of] Slate Creek at mile 36.1 (Reservoir)	Montgomery
<u>Mt Sterling Water & Sewer System</u>	<u>Mile 36.5 of Slate Creek (at the plant)</u>	<u>Montgomery</u>
Cynthiana Municipal Water Works	Mile <u>50.4</u> [51.2] of South Fork Licking River	Harrison
Flemingsburg Utilities	Mile 0.7 of UT to Town Branch (Flemingsburg Lake)	Fleming
Williamstown Municipal Water	Mile 1.89 of Lake Branch (Lake Williamstown)	Grant
Morehead State University Water Plant	Mile 0.7 of Evans Branch (Evans Branch Impoundment)	Rowan
Morehead State University Water Plant	Mile 13.7 of Triplets Creek	Rowan
Carlisle Municipal Water Plant	Mile 3.5 of UT to Brushy Fork (City Lake)	Nicholas
Falmouth Water Plant	Mile <u>52.09</u> [52.7] of Licking River	Pendleton
Morehead Utility Plant Board	Mile <u>170.6</u> [477.7] of Licking River	Rowan
[West Liberty Water Company	Mile 228.6 of Licking River	Morgan]
Western Fleming Water District	Mile <u>100.5</u> [102.5] of Licking River	Nicholas
Salyersville Municipal Water Works	Mile <u>270.3</u> [273.2] of Licking River	Magoffin
Cynthiana Municipal Water Works	Mile <u>83.1</u> [84.5] of Licking River	Harrison
Flemingsburg Utilities	UT of Town Branch at mile 1.6 (Old Reservoir)	Fleming
[Flemingsburg Utilities	Mile 131.8 of Licking River	Fleming]
Carlisle Municipal Water Department	Mile <u>107.8</u> [110.2] Licking River	Nicholas
West Liberty Water Company	Mile <u>4.35</u> [3.9] of North Fork Licking River (Cave Run Lake)	Rowan
Cave Run Water Commission	Mile <u>195.9</u> [197.4] of Licking River (Cave Run Lake)	Menifee
Rattlesnake Ridge Water District	Mile 57.4 of Little Sandy River (Grayson Lake)	Carter [Elliott]
Kentucky River Basin		
Lancaster Municipal Water Works	Mile <u>141.62</u> [145.2] of Kentucky River (Pool #8)	Garrard
Northpoint Training Center	Mile 17.3 of Dix River (Herrington Lake)	Boyle

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Frankfort Electric & Water Plant Board	Mile <u>69.8</u> [74.7] of Kentucky River (Pool #4)	Franklin
Hazard Water Department	Mile 104.1 of North Fork Kentucky River	Perry
Wilmore Utilities System	Mile <u>114.0</u> [117.2] of Kentucky River (Pool #6)	Jessamine
Nicholasville Water Works	Mile <u>154.1</u> [157.9] of Kentucky River (Pool #8)	Jessamine
Berea Municipal Utilities	Mile 3.6 of Cowbell Creek Cowbell Lake	Madison
Jackson Municipal Water Works	Mile <u>305.45</u> [47.2] of North Fork Kentucky River	Breathitt
Kentucky American Water Company Plant A	Mile <u>167.43</u> [174.5] of Kentucky River (Pool #9)	Fayette
Kentucky American Water Company Plant B	Mile 10.6 of East Hickman Creek (Reservoir #4)	Fayette
Kentucky American Water Company	Reservoir #1 (Lake Ellerslie) (Primarily used as emergency back-up)	Fayette
Danville Water Works	Mile 18.9 of Dix River (Herrington Lake)	Boyle
Lawrenceburg Municipal Water Works	Mile <u>83.75</u> [86.2] of Kentucky River	Anderson
Versailles Municipal Water Works	Mile <u>85.27</u> [87.7] of Kentucky River (Pool 5)	Woodford
Harrodsburg Municipal Water Works	Mile <u>117.85</u> [124.0] of Kentucky River (Pool 7)	Mercer
Stanford Water Works	Mile <u>5.63</u> [6.9] of Neals Creek (Rice Lake)	Lincoln
Richmond Utilities Board	Mile <u>201.3</u> [206.49] of Kentucky River (Pool 11)	Madison
Whitesburg Municipal Water Works/Veolia Water	Mile <u>150.95</u> [150.9] of North Fork Kentucky River	Letcher
Manchester Water Works	Mile 3.9 of Beech Creek (Bert Combs Lake)	Clay
Georgetown Municipal Water & Sewer	Mile <u>50.9</u> [33.5] of North Elkhorn Creek	Scott
Beattyville Water Works	Mile <u>262.8</u> [1.3] of North Fork Kentucky River (Pool #14)	Lee
Bullock Pen Water District	Mile 2.8 Of Bullock Pen Creek (Bullock Pen Lake)	Grant
[Ky Parks Natural Bridge State Park	Mile 0.11 of Mill Creek (Mill Creek Lake)	Powell]
Winchester Municipal Utilities	Mile 6.5 of Lower Howard Creek (Winchester Reservoir {Carol E. Ecton Reservoir})	Clark
Winchester Municipal Utilities	Mile <u>176.5</u> [1180.8] of Kentucky River (Pool #10)	Clark
Campton Water Works	Mile 0.3 of Hiram Branch (Campton Lake)	Wolfe
Hyden-Leslie County Water District	Mile <u>76.6</u> [75.4] of Middle Fork Kentucky River [(Buckhorn Reservoir)]	Leslie
Booneville Water & Sewer District	Mile 12.8 of South Fork Kentucky River	Owsley
Georgetown Municipal Water & Sewer	Mile 0.61 of UT (Royal Springs) at mile 33.5 of North Elkhorn Creek	Scott
Kentucky American Northern Division [Owenton Water Works]	Mile <u>0.55</u> [0.6] of Severn Creek	Owen
Kentucky American Northern Division [Owenton Water Works]	Mile 6.3 of North Fork of North Severn Creek [1.1 of UT to North Severn Creek at mile 5.5] (Lower Thomas Lake)	Owen
Irvine Municipal Utilities	Mile <u>218.5</u> [223.4] of Kentucky River (Pool #11)	Estill
Bluegrass Army Depot	Mile 0.4 of Little Muddy Creek (Lake Vega)	Madison
Beech Fork Water Commission	Mile 0.3 of Beech Fork (Beech Fork Reservoir)	Powell
Berea Municipal Utilities	Mile 2.1 of East Fork Silver Creek (Lower Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.5 of Owsley Fork (Owsley Fork Lake)	Madison
Manchester Water Works	Mile <u>19.5</u> [48.9] of Goose Creek	Clay
[Blackey Municipal Water Works	Mile 131.0 of North Fork Kentucky River	Letcher]
Beech Fork Water Commission	Mile 31.0 of Red River	Powell
Kentucky American Water Co (Plant C	Mile 47.8 of Kentucky River	Franklin
Knott County Water and Sewer District	Mile 11.6 of Carr Fork Lake	Knott
Salt River Basin		
Shelbyville Municipal Water & Sewer Commission	Mile <u>27.5</u> [28.0] of Guist Creek (Guist Creek Lake)	Shelby
Bardstown Municipal Water Works	Mile 1.1 of Buffalo Creek (Lake Sympson)	Nelson
Lebanon Water Works Company	Mile 98.2 of Rolling Fork River	Marion
Springfield Water Works	Mile 4.2 of Long Lick Creek (Willisburg Lake)	Washington
Lebanon Water Works Company	Mile <u>2.0</u> [1.9] of Fagan Branch (Fagan Branch Reservoir)	Marion
Springfield Water Works	Mile 1.3 of Allen Branch (Springfield Reservoir)	Washington
Green River Basin		
[Hidden Valley Springs	Mile 0.4 of Hidden Valley Spring of UT to Rock Creek at mile 5.9	Grayson]
Morgantown Utilities Commission	Mile <u>143.27</u> [144.8] of Green River	Butler
Campbellsville Water Works	Mile 1.3 of Trace Fork (City Reservoir)	Taylor
Columbia/Adair Water Commission	Mile 311.7 Green River Lake	Taylor
[Columbia Utilities Commission	Mile 42.7 of Russell Creek	Adair]
Glasgow Water Co/Plant B	Mile 22.4 of Beaver Creek	Barren
Greensburg Municipal Water Works	Mile <u>279.8</u> [283.5] of Green River	Green
Livermore Water Works	Mile <u>71.3</u> [71.9] of Green River	McLean
Elizabethtown Municipal Water Works A	From Old City Spring at mile <u>9.55</u> [40.6] of Valley Creek	Hardin

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Elizabethtown Municipal Water Works A	Gaithers Station Spring at mile 7.48 [6.9] of Valley Creek	Hardin
Bowling Green Municipal Utilities	Mile 37.8 [38.1] of Barren River	Warren
Green River Valley Water District	Rio Springs at UT to Green River at mile 240.6	Hart
Hodgenville Water Works	Mile 114.7 [5.8] of North Fork Nolin River	Larue
[Hardinsburg/Us Filter	Tules Creek at mile 1.2 (Rough River Reservoir)	Breckinridge]
Central City Municipal Water & Sewer	Mile 85.4 [86.0] of Green River	Muhlenberg
Calhoun Water Works	Mile 63.9 of Green River	McLean
Hartford Municipal Water Works	Mile 29.8 of Rough River	Ohio
Greenville Utilities Commission	Luzerne Lake (Luzerne Lake no longer connected to Caney Creek at mile 2.3	Muhlenberg
Ohio County Water Plant	Mile 130.55 [131.9] of Green River	Ohio
Franklin Water Plant	Mile 23.4 of West Fork Drake's Creek	Simpson
Glasgow Water Co/Plant A	Mile 86.8 of Barren River (Barren River Reservoir)	Barren
Leitchfield Municipal Water Works	Mile 107.7 of Rough River (Reservoir)	Grayson
Campbellsville Water Works	Mile 5.3 of Robinson Creek (Green River Reservoir)	Taylor
Edmonson County Water District	Mile 181.3 [183.7] of Green River	Edmonson
Elizabethtown Municipal Water Works B	Mile 2.1 of Freeman Creek (Freeman Lake)	Hardin
Tompkinsville Municipal Water Works	Mile 6.0 of Mill Creek (Mill Creek Reservoir)	Monroe
Madisonville Municipal Water Works	Mile 54.1 of Green River	Hopkins
Liberty Water Works	Mile 1.4 [0.9] of Hickman Creek (Lake Liberty)	Casey
[City of Lafayette (Tennessee)	Mile 118.4 of Barren River	Monroe]
Stanford Water Works	Mile 0.6 of UT to Green River (James C. Harris Reservoir)	Lincoln
Hardin County Water District #2	Nolin River at mile 80.4 [75.3] (White Mills Spring)	Hardin
Green River Valley Water District	Mile 237.0 [240.6] of Green River	Hart
Scottsville Municipal Water Works	Mile 91.7 [88.6] of Barren River (Barren River Lake)	Allen
Butler County Water System	Mile 143.8 of Green River	Butler
Edmonson County Water District	Mile 28.0 [23.5] of Nolin River (Nolin Reservoir)	Grayson
[Columbia Utilities Commission	Mile 317.5 of Green River (Green River Reservoir)	Adair]
Henderson Water Utilities/South	Mile 41.3 of Green River	Webster
Webster Cnty Water District	Mile 47.5 of Green River	Webster
Hodgenville Water Works	Mile 0.3 of UT at mile 116.9 [8.1] of North Fork Nolin River (Salem Lake)	Larue
Grayson County Water District	Mile 97.7 of Rough River (Rough River Reservoir)	Grayson
Lower Cumberland River Basin		
Kentucky State Penitentiary	Mile 43.65 [40.2] of Cumberland River (Lake Barkley)	Lyon
Hopkinsville Water Environmental Authority	Mile 74.83 [44.2] of North Fork Little River	Christian
Hopkinsville Water Environmental Authority	Mile 14.6 [41.9] of Little River (Lake Barkley)	Trigg
[Eddyville Municipal Water Works	Mile 1.5 of Knob Creek (Lake Barkley)	Lyon]
Princeton Water Department	Mile 46.0 [41.9] of Cumberland River (Lake Barkley)	Lyon
Kuttawa Municipal Water Plant	Mile 41.0 [37.9] of Cumberland River (Lake Barkley)	Lyon
Barkley Lake Water District	Mile 0.7 of Hopson Creek (Lake Barkley)	Trigg
Crittenden-Livingston Co Water District	Mile 15.95 [44.0] of Cumberland River	Livingston
Hopkinsville Water Environmental Authority	From Hopkinsville Stone Quarry No. 1 (South Quarry) adjacent to North Fork Little River at mile 14.8	Christian
Cadiz Water Company	Mile 13.5 of Little River (emergency use only when primary Cadiz Spring is unable to provide sufficient supply)	Trigg
Cadiz Water Co	Mile 3.2 of Little Yellow Creek	Trigg
Hopkinsville Water Environmental Authority	Hopkinsville Stone Quarry No. 2 (North Quarry) adjacent to White Creek at mile 0.2	Christian
[TVA-Land Between The Lakes, Wrangler	Mile 1.0 on UT of Lick Creek at mile 1.1	Trigg]
Eddyville Municipal Water Works	Mile 40.2 of Cumberland River (Lake Barkley)	Lyon
Logan Todd Regional Water Commission	Cumberland River at Clarksville TN	TN
Tradewater River Basin		
Providence Water Works	Mile 0.3 of Owens Creek (New Providence City Lake)	Webster
Madisonville Municipal Water Works	Mile 6.3 of Greasy Creek (Lake Pewee).	Hopkins
[Earlington Water Works	Mile 0.2 of UT to Clear Creek at mile 26.5 (Loch Mary Reservoir)	Hopkins]
Dawson Springs City Water & Sewer	Mile 0.1 of Piney Creek (Lake Beshear)	Caldwell
Providence Municipal Water Works	Mile 40.8 [41.3] of Tradewater River	Webster
Ohio River Basin (Main Stem And Minor Tributaries)		
Maysville Utility Commission	Mile 408.5 of Ohio River	Mason
Ashland Municipal Water Works	Mile 319.68 of Ohio River	Boyd
Northern Ky Water Service District - Newport Plant	Mile 463.6 of Ohio River	Campbell

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Paducah Water Works	Mile 935.6 of Ohio River	McCracken
Louisville Water Company /ZPS A	Mile 600.6 of Ohio River	Jefferson
Henderson Water & Sewer Department	Mile 803.6 of Ohio River	Henderson
Northern Ky Water Service District Plant B	Mile 462.7 of Ohio River	Campbell
Morganfield Municipal Water Works	Mile 840.0 of Ohio River	Union
Russell Water Plant	Mile 327.7 of Ohio River	Greenup
Marion Municipal Water Works	Mile <u>25.6</u> [26.4] of Crooked Creek (City Lake)	Crittenden
US Army Ft Knox A	Mile 8.6 of Otter Creek	Meade
Louisville Water Company BEPWTP B	Mile 594.7 of Ohio River	Jefferson
Sturgis Municipal Water Works	Mile 871.4 of Ohio River	Union

(3)(a) Table C in this subsection lists waters that have:

1. A designated use of CAH or OSRW; or
2. Exceptions to specific criteria in 401 KAR 10:031.

(b) All other criteria in 401 KAR 10:031 applicable to the listed use designations shall apply to surface waters listed in Table C in this subsection.

(c)1.DWS use shall apply to all waters listed in Table C in this section.

2.DWS use criteria found in 401 KAR 10:031, Section 6, shall apply only at the surface water intakes listed in Table B of this section.

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone (Descriptive and water body or segment river miles)	County	Use Designation	Exceptions to Specific Criteria
BIG SANDY RIVER BASIN				
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters (0.0-3.9)	Martin	WAH, PCR, SCR, OSRW	
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters (0.6-1.9)	Pike	WAH, PCR, SCR, OSRW	
Paint Creek of Levisa Fork	Levisa Fork to Paintsville Dam (0.0-8.3)	Johnson	CAH, PCR, SCR	
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line (15.0-16.5)	Pike	WAH, PCR, SCR, OSRW	
Thompson Fork of Souders Branch	Mouth to Headwaters (0.0-1.0)	Floyd	WAH, PCR, SCR, OSRW	
Toms Branch of Elkhorn Creek	Mouth to Headwaters (0.0-1.6)	Pike	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters (0.0-0.55)	Martin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Open Fork Paint Creek	Mouth to Headwaters (0.0-0.8)	Morgan	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
LITTLE SANDY RIVER BASIN				
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters (0.0-5.1)	Elliott	WAH, PCR, SCR, OSRW	
Big Caney Creek	Grayson Lake to source (1.8-15.3)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and Arab Fork (11.0-15.9 [6.4-15.2])	Carter/ Elliott	WAH, PCR, SCR, OSRW	
Laurel Creek of Little Sandy River	Little Sandy River to Carter School Rd (0.0-7.6)	Elliott/ Rowan	CAH, PCR, SCR,	
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Headwaters (7.6-14.7)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters (0.0-1.4)	Elliott	WAH, PCR, SCR, OSRW	
Middle Fork of Little Sandy River	Mouth to Sheepskin Branch (0.0-3.4)	Elliott	WAH, PCR, SCR, OSRW	
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters (0.0-2.0)	Elliott	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR	
LICKING RIVER BASIN				

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Blackwater Creek of Licking River	Eaton Creek to Greasy Fork (3.8-11.7)	Morgan	WAH, PCR, SCR, OSRW	
Blanket Creek of Licking River	Mouth to Unidentified Tributary (0.0-1.9)	Pendleton	WAH, PCR, SCR, OSRW	
Botts Fork of Brushy Fork of Licking River	Mouth to Landuse Change (0.0-2.1)	Menifee	WAH, PCR, SCR, OSRW	
Bowman Creek	Mouth to Unidentified Tributary (0.0-6.0)	Kenton	WAH, PCR, SCR, OSRW	
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to Headwaters (0.7-5.6)	Menifee	WAH, PCR, SCR, OSRW	
Bucket Branch of North Fork of Licking River	Mouth to Headwaters (0.0-1.9)	Morgan	WAH, PCR, SCR, OSRW	
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek (0.0-1.7)	Robertson	WAH, PCR, SCR, OSRW	
Craney Creek	Source to North Fork of Licking River (0.0-11.2)	Rowan/ Morgan	CAH, PCR, SCR, OSRW	
Devils Fork of North Fork of Licking River	Mouth to Headwaters (0.0-8.5)	Elliott/ Morgan	WAH, PCR, SCR, OSRW	
Flour Creek of Licking River	Mouth to Unidentified Tributary (0.0-2.2)	Pendleton	WAH, PCR, SCR, OSRW	
Grovers Creek of Kincaid Creek	Kincaid Lake Backwaters to Unidentified Tributary (0.5-3.4)	Bracken/ Pendleton	WAH, PCR, SCR, OSRW	
Licking River	River Mile 175.6 (U.S. Highway 60 Bridge) to River Mile 180.8 (Cave Run Lake Dam (175.6-180.8)	Bath/ Rowan	CAH, PCR, SCR	
Licking River	River Mile <u>159.3</u> [459.5] (SR [Hwy] 211) to River Mile <u>170.5</u> [470.6] (Unnamed Road off <u>Slate</u> [Slatey] Point Road)	Bath/ Rowan/ Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 19.3 (Hwy 536 Bridge) to River Mile 117.6 (1.3 river miles above Fishtap Creek)	Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming	WAH, PCR, SCR, OSRW	
Minor Creek of Craney Creek	Mouth to river mile 2.8 (0.0-2.8)	Morgan/ Rowan	CAH, PCR, SCR	
North Fork of Licking River	Cave Run Lake Backwaters to Devils Fork (8.4-13.4)	Morgan	WAH, PCR, SCR, OSRW	
Sawyers Fork of Cruises Creek	Mouth to Headwaters (0.0-3.3)	Kenton	WAH, PCR, SCR, OSRW	
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters (0.0-3.7)	Rowan	CAH, PCR, SCR, OSRW	
Slate Creek of Licking River	Mouth to Mill Creek (0.0-13.55)	Bath	WAH, PCR, SCR, OSRW	
South Fork Grassy Creek of Grassy Creek of Licking River	Mouth to Greasy Creek (0.0-19.8)	Kenton/ Pendleton	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters 0.0-2.2)	Mason	WAH, PCR, SCR, OSRW	
Welch Fork of Brushy Fork of Licking River	Mouth to First Unnamed Tributary (0.0-1.0)	Menifee	WAH, PCR, SCR, OSRW	
West Creek of Licking River	Mouth to Headwaters (0.0-9.8)	Harrison/ Robertson	WAH, PCR, SCR, OSRW	
KENTUCKY RIVER BASIN				
Backbone Creek of Sixmile Creek of Kentucky River	Mouth to Scrabble Creek (0.0-1.65)	Franklin/ Henry/ Shelby	WAH, PCR, SCR, OSRW	
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters (0.3-1.2)	Perry	WAH, PCR, SCR, OSRW	
Big Double Creek of Red Bird River	Mouth to Confluence of Left and Right Forks of Big Double Creek (0.0-4.4)	Clay	WAH, PCR, SCR, OSRW	
Bill Branch of Laurel Fork of Greasy Creek	Mouth to Right Fork and Left Fork Creek (0.0-0.3)	Leslie	WAH, PCR, SCR, OSRW	
Billie Fork of Millers Creek	Land Use Change to Headwaters (2.6-8.8)	Lee/Elliott	WAH, PCR, SCR, OSRW	
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.3)	Owsley	WAH, PCR, SCR, OSRW	
Buffalo Creek of South Fork of Kentucky River	Mouth to Right Fork and Left Fork (0.0-1.6)	Owsley	WAH, PCR, SCR, OSRW	
Bullskin Creek of South Fork Kentucky River	Mouth to Headwaters (0.0-14.55)	Clay	WAH, PCR, SCR, OSRW	

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Cavanaugh Creek	South Fork of Station Camp Creek to Foxtown Rd (0.0-8.3)	Jackson	WAH, PCR, SCR, OSRW	
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run (0.0-0.9)	Scott	WAH, PCR, SCR, OSRW	
Chester Creek of Middle Fork of Red River	Mouth to Headwaters (0.0-2.8)	Wolfe	WAH, PCR, SCR, OSRW	
Chimney Top Creek of Red River	Basin (0.0-4.6)	Wolfe	CAH, PCR, SCR	
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek (0.0-9.0)	Woodford	WAH, PCR, SCR, OSRW	
Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-4.8)	Breathitt	WAH, PCR, SCR, OSRW	
Coles Fork of Buckhorn Creek	Mouth to Headwaters (0.0-6.2)	Breathitt	WAH, PCR, SCR, OSRW	
Craig Creek of Kentucky River	Mouth (Kentucky River Backwaters) to Unidentified Tributary (0.0- 2.7)	Woodford	WAH, PCR, SCR, OSRW	
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters (0.3-1.35)	Leslie	WAH, PCR, SCR, OSRW	
Dix River	Mouth (Kentucky River) to River Mile 3.1 (Herrington Lake Dam) (0.0-3.1)	Garrard/ Mercer	CAH, PCR, SCR	
Dog Fork of Swift Camp Creek	Basin	Wolfe	CAH, PCR, SCR	
Drennon Creek of Kentucky River	Fivemile Creek to Town Branch (8.7-12.2)	Henry	WAH, PCR, SCR, OSRW	
East Fork of Indian Creek of Indian Creek of Red River	Headwaters East Fork of Indian Creek to Indian Creek (0.0-9.0)	Menifee	CAH, PCR, SCR OSRW	
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek (0.8-1.8)	Leslie	WAH, PCR, SCR, OSRW	
Emily Run of Drennon Creek	Mouth to Unidentified Tributary (0.0-4.0)	Henry	WAH, PCR, SCR, OSRW	
Evans Fork of Billey Fork of Millers Creek	Mouth to Headwaters (0.0-3.0)	Estill	WAH, PCR, SCR, OSRW	
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.7)	Breathitt	WAH, PCR, SCR, OSRW	
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary (0.0-2.6)	Anderson	WAH, PCR, SCR, OSRW	
Gladie Creek of Red River	Basin	Menifee	CAH, PCR, SCR	
Gladie Creek of Red River	Land Use Change to Long Branch (0.5-7.25)	Menifee	CAH, PCR, SCR, OSRW	
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek (0.0-9.1)	Clay/Leslie	WAH, PCR, SCR, OSRW	
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary (0.1-3.5)	Woodford	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-1.9)	Franklin	WAH, PCR, SCR, OSRW	
Hardwick Creek of Red River	Mouth to Little Hardwick Creek (0.0-3.25)	Powell	WAH, PCR, SCR, OSRW	
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW	
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary (0.1-1.9)	Madison	WAH, PCR, SCR, OSRW	
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters (0.0-1.35)	Leslie	WAH, PCR, SCR, OSRW	
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters (0.0-1.8)	Jackson	WAH, PCR, SCR, OSRW	
Indian Creek of Eagle Creek	Mouth to Headwaters (0.0-5.4)	Carroll	WAH, PCR, SCR, OSRW	
Indian Creek of Red River	River Mile 1.25 (East Fork of Indian Creek) to River Mile 5.2 (0.3 river miles below Bear Branch)	Menifee	CAH, PCR, SCR	
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-3.3)	Shelby	WAH, PCR, SCR, OSRW	
Jessamine Creek of Kentucky River	<u>Stream segment within the R.J. Corman Natural Area (12.3-13.55)</u>	<u>Jessamine</u>	<u>WAH, PCR, SCR, OSRW</u>	
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW	

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Joyce Fork of Cortland Fork	Mouth to Headwaters (0.0-1.2)	Owsley	WAH, PCR, SCR, OSRW	
Katies Creek of Red Bird River	Mouth to Headwaters (0.0-4.0)	Clay	WAH, PCR, SCR, OSRW	
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek	Cortland Fork to Big Branch (0.0-3.75)	Owsley	WAH, PCR, SCR, OSRW	
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters (0.0-1.5)	Clay	WAH, PCR, SCR, OSRW	
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters (12.2-28.6)	Letcher	WAH, PCR, SCR, OSRW	
Little Middle Fork of Elisha Creek of Red Bird River	Mouth to Headwaters (0.0-0.75)	Leslie	WAH, PCR, SCR, OSRW	
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW	
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-5.3)	Henry	WAH, PCR, SCR, OSRW	
Little Sturgeon Creek of Sturgeon Creek	Mouth to Warren Chapel Branch (0.0-3.0)	Owsley	WAH, PCR, SCR, OSRW	
Low Gap Branch of Elk Creek	Mouth to Headwaters (0.0-0.8)	Letcher	WAH, PCR, SCR, OSRW	
Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek (0.0-4.65)	Lee	WAH, PCR, SCR, OSRW	
Lower Howard Creek of Kentucky River	Mouth to West Fork (0.5- 6.6)	Clark	WAH, PCR, SCR, OSRW	
Lulbegrud Creek of Red River	Mouth to Falls Branch (0.0-7.3)	Clark/ Powell	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Mouth to Upper Twin Creek (0.0-12.7)	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek (75.2-85.5)	Leslie	WAH, PCR, SCR, OSRW	
Middle Fork of Red River	River Mile 10.7 (0.7 river miles below Sinking Fork) to Headwaters (15.3)	Powell	CAH, PCR, SCR	
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake (1.8-7.2)	Powell	CAH, PCR, SCR, OSRW	
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.7)	Owsley	WAH, PCR, SCR, OSRW	
Mill Creek of Kentucky River	Near Mouth to Headwaters (0.0-1.85)	Owen	WAH, PCR, SCR, OSRW	
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.85)	Breathitt	WAH, PCR, SCR, OSRW	
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Fork (13.8-20.65)	Madison	WAH, PCR, SCR, OSRW	
Musselman Creek of Eagle Creek	Mouth to Headwaters (0.0-9.0)	Grant	WAH, PCR, SCR, OSRW	
Parched Corn Creek	Source to Red River (0.0-2.25)	Wolfe	CAH, PCR, SCR	
Red River	River Mile 70.4 (SR 746) to River Mile 50.3 (0.1 Miles below Auxier Branch)	Menifee/ Wolfe	WAH, PCR, SCR, OSRW	
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek (0.0-15.3)	Clay	WAH, PCR, SCR, OSRW	
Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters (0.0-2.1)	Owsley	WAH, PCR, SCR, OSRW	
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters (0.0-3.3)	Leslie	WAH, PCR, SCR, OSRW	
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.9)	Breathitt	WAH, PCR, SCR, OSRW	
Rock Lick Creek	Mouth to Headwaters (0.0-9.6)	Jackson	WAH, PCR, SCR, OSRW	
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-3.9)	Henry	WAH, PCR, SCR, OSRW	
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek (1.35-3.0)	Owen	WAH, PCR, SCR, OSRW	
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run (0.1-1.4)	Mercer	WAH, PCR, SCR, OSRW	
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters (0.0-0.6)	Breathitt	WAH, PCR, SCR, OSRW	
Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam (7.1-15.3)	Henry	WAH, PCR, SCR, OSRW	
South Fork of Kentucky River	Mouth to Sexton Creek (0.0-27.8)	Owsley	WAH, PCR, SCR, OSRW	

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South Fork of Red River	Mouth to Sandlick Fork (0.0-4.2)	Powell	WAH, PCR, SCR, OSRW	
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek (0.0-9.7)	Jackson	WAH, PCR, SCR, OSRW	
Spruce Branch of Redbird River	Mouth to Headwaters (0.0-1.0)	Clay	WAH, PCR, SCR, OSRW	
Station Camp Creek of Kentucky River	Landuse Change (Crooked Cr.) to South Fork of Station Camp Creek (3.3-22.7)	Estill	WAH, PCR, SCR, OSRW	
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary (0.0-4.2)	Fayette	WAH, PCR, SCR, OSRW	
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters (0.0-2.7)	Jackson	CAH, PCR, SCR, OSRW	
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek (1.3-13.7)	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Sugar Creek of Redbird River	Landuse Change to Headwaters (0.6-5.4)	Leslie	WAH, PCR, SCR, OSRW	
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters (0.0-5.2)	Franklin	WAH, PCR, SCR, OSRW	
Swift Camp Creek	Red River to Source (0.0-13.9)	Wolfe	CAH, PCR, SCR	
Unidentified Tributary of Ca-wood Branch of Beech Fork	Mouth to Headwaters (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters (0.0-1.4)	Owen	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glenns Creek of Kentucky River	Mouth to Headwaters (0.0-1.9)	Woodford	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters (0.0-1.15)	Madison	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Kentucky River	Mouth at Kentucky River Backwaters to Land Use Change (0.1-1.4)	Franklin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters (0.0-0.6)	Letcher	WAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Mouth to Headwaters (0.0-13.8)	Jackson	CAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Basin above River Mile 1.9 (0.3 river miles below-Tarpin Lick Branch (2.5))	Jackson	CAH, PCR, SCR	
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-1.0)	Owsley	WAH, PCR, SCR, OSRW	
Wolfpen Creek of Red River	Mouth to Headwaters (0.0-3.6)	Menifee	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR	
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR	
SALT RIVER BASIN				
Brashears Creek of Salt River	Guist Creek to Bullsken and Clear Creek (13.0-25.9)	Shelby/ Spencer	WAH, PCR, SCR, OSRW	
Cedar Creek of Salt River	Mouth to Greens Branch (0.0-5.2)	Bullitt	WAH, PCR, SCR, OSRW	
Chaplin River of Salt River	Thompson Creek to Cornishville, Kentucky (40.9-54.2)	Washington	WAH, PCR, SCR, OSRW	
Doctors Fork of Chaplin River	Mouth to Begley Branch (0.0-3.8)	Boyle	WAH, PCR, SCR, OSRW	
Guist Creek of Brashears Creek	Mouth to Jephtha Creek (0.0-15.7)	Spencer	WAH, PCR, SCR, OSRW	
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-1.8)	Bullitt	WAH, PCR, SCR, OSRW	
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary (0.0-2.9)	Mercer	WAH, PCR, SCR, OSRW	
Lick Creek of Long Lick Creek of Beech Fork of Salt River	Mouth to 0.1miles below Dam (0.0-4.1)	Washington	WAH, PCR, SCR, OSRW	

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Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek (1.7-2.9)	Larue	WAH, PCR, SCR, OSRW	
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek (0.0-3.2)	Bullitt	WAH, PCR, SCR, OSRW	
Paddy's Run	Mouth (Ohio River) to headwaters	Jefferson	PCR, SCR	401 KAR 10:031, Section 2(1)(d) and 2(2) do not apply.
Rolling Fork of Salt River	River Mile 53.6 (0.8 mi upstream of Stiles Rd Bridge) to River Mile 62.5 (0.5 mi upstream of Otter Cr)	Larue/ Nelson	WAH, PCR, SCR, OSRW	
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-8.6)	Larue, Marion	WAH, PCR, SCR, OSRW	
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek (0.0-10.0)	Anderson/ Mercer/ Washington	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters (0.0-2.3)	Washington	WAH, PCR, SCR, OSRW	
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0- <u>5.4</u> [5-1])	Larue	WAH, PCR, SCR, OSRW	
Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-18.4)	Bullitt/ Nelson	WAH, PCR, SCR, OSRW	
GREEN RIVER BASIN				
Barren River	Green River to River Mile Lock and Dam #1 to Green River (0.0-15.1)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Beaverdam Creek	Source to Green River (14.5-0.0)	Edmonson	CAH, PCR, SCR, OSRW	
<u>Big Brush Creek</u>	<u>Brush Creek to Poplar Grove Branch (13.0-17.3)</u>	<u>Green</u>	<u>WAH, PCR, SCR, OSRW</u>	
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters (0.8-6.5)	Hart	WAH, PCR, SCR, OSRW	
Caney Fork of Peter Creek	Mouth to Headwaters (0.0-6.7)	Barren	WAH, PCR, SCR, OSRW	
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway (7.5-17.3)	Grayson	WAH, PCR, SCR, OSRW	
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick 0.0-13.4)	Todd	WAH, PCR, SCR, OSRW	
Double Sink Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
East Fork of Little Barren River	Red Lick Creek to Flat Creek (18.9-20.6)	Metcalfe	WAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary (underground system)	Edmonson	CAH, PCR, SCR, OSRW	
<u>Elk Lick Creek</u>	<u>0.1 Mile Downstream of Mouth of Duck Lick Creek to Barren Fork Creek and Edger Creek (3.6-11.8)</u>	<u>Logan</u>	<u>WAH, PCR, SCR, OSRW</u>	
Ellis Fork of Damron Creek	Mouth to Headwaters (0.0-2.2)	Adair/ Russell	WAH, PCR, SCR, OSRW	
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters (10.8-15.2)	Barren/ Metcalfe	WAH, PCR, SCR, OSRW	
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters (0.0-5.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary (0.0-4.1)	Christian	WAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Gasper River of Barren River	Clear Fork to Wiggington Creek (17.2-35.6)	Logan/ Warren	WAH, PCR, SCR, OSRW	
Goose Creek of Green River	Mouth to Little Goose Creek (0.0-8.5)	Casey/ Russell	WAH, PCR, SCR, OSRW	
Green River	River Mile 210.6 (eastern Mammoth Cave National Park Boundary to River Mile 309.1 (Green River Lake Dam)	Hart/Taylor/ Green	WAH, PCR, SCR, OSRW	
Green River	River Mile 185.0 (western Mammoth Cave National Park Boundary) to River Mile 210.6 (eastern Mammoth Cave National Park Boundary)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	

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Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek (185.0-250.3)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	River Mile 148.5 (1.0 river mile below Lock and Dam #4) to River Mile 170.0 (Lock and Dam #5)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Halls Creek of Rough River	Unidentified Tributary to Headwaters (4.8-9.6)	Ohio	WAH, PCR, SCR, OSRW	
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters (0.0-10.2)	Simpson	CAH, PCR, SCR, OSRW	
Linders Creek of Rough River	Mouth to Sutzer Creek (0.0-7.9)	Hardin	WAH, PCR, SCR, OSRW	
Little Beaverdam Creek of Green River	Mouth to SR 743 (0.0-11.4)	Edmonson/ Warren	WAH, PCR, SCR, OSRW	
Little Short Creek of Rough River	Mouth to Headwaters (0.0-3.1)	Grayson	WAH, PCR, SCR, OSRW	
Lynn Camp Creek	Green River to Source (0.0-8.3)	Hart	CAH, PCR, SCR	
Lynn Camp Creek of Green River	Mouth to Lindy Creek (0.0-8.5)	Hart	CAH, PCR, SCR, OSRW	
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary (1.5-5.0)	Christian	WAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch (5.2-14.0)	Grayson/ Har- din	WAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters (13.5-15.5)	Ohio	WAH, PCR, SCR, OSRW	
Nolin River	River Mile 7.7 (Nolin Lake Dam) to Green River (0.0-7.7)	Edmonson	CAH,WAH, PCR, SCR	
North Fork of Rough River	Buffalo Creek to Reservoir Dam (22.1 -26.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Peter Creek of Barren River	Caney Fork to Dry Fork (11.6-18.5)	Barren	WAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pond Run of Rough River	Landuse Change to Headwaters (1.4-6.8)	Brecki- nridge/Ohio	WAH, PCR, SCR, OSRW	
Puncheon Creek	<u>Mouth to state line</u>	<u>Allen</u>	<u>WAH, PCR, SCR, OSRW</u>	
Rough River	Linders Creek to Vertrees Creek (138.0-149.4)	Hardin	WAH, PCR, SCR, OSRW	
Rough River	River Mile 89.6 to Rough River Lake Dam to 90.4	Ohio/ Grayson	CAH,WAH, PCR, SCR	
Rough River	River Mile 74.5 to River Mile 74.2 (Hwy 54 Bridge)	McLean/ Ohio	CAH, PCR, SCR	
Roundstone Creek of Nolin River	Hwy 1140 (River Mile 3.8) to Headwaters (River Mile 10.25)	Hart	CAH, PCR, SCR	
Running Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Russell Creek of Green River	Mouth to Columbia WWTP (0.0-40.0)	Green/ Adair	WAH, PCR, SCR, OSRW	
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek (56.9 -66.3)	Adair, Russell	WAH, PCR, SCR, OSRW	
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters (2.0-7.5)	Ohio	WAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave National Park Boundary	Hart/ Barren	CAH, PCR, SCR, OSRW	
Sulphur Branch of Alexander Creek	Mouth to Headwaters (0.0-3.0)	Edmonson	WAH, PCR, SCR, OSRW	
Thompson Branch	Webb Branch to Tennessee State Line (0.3-1.5)	Simpson	WAH, PCR, SCR, OSRW	
Trammel Fork of West Fork of Drakes Creek	River Mile 30.6 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.8)	Allen	CAH, PCR, SCR,	
Trammel Fork of West Fork of Drakes Creek	Mouth to Tennessee State Line (0.0-30.6)	Allen/ Warren	CAH, PCR, SCR, OSRW	

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Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/Barren	CAH, PCR, SCR, OSRW	
Underground River System	Mammoth Cave National Park	Edmonson/Hart/Barren	CAH, PCR, SCR, OSRW	
Unidentified Tributary of Green River	Landuse Change to Headwaters (1.7-3.2)	Adair	WAH, PCR, SCR, OSRW	
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76 (0.0-2.1)	Adair	WAH, PCR, SCR, OSRW	
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River (12.45 -22.5)	Christian	WAH, PCR, SCR, OSRW	
TRADEWATER RIVER BASIN				
East Fork of Flynn Fork of Tradewater River	Landuse Change (US Hwy 62) to Headwaters (2.15-4.6)	Caldwell	WAH, PCR, SCR, OSRW	
Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters (4.5-10.2)	Caldwell, Christian	WAH, PCR, SCR, OSRW	
Sandlick Creek of Tradewater River	Camp Creek to Headwaters (4.5-8.6)	Christian	WAH, PCR, SCR, OSRW	
Tradewater River	Dripping Springs Branch to Buntin Lake Dam (126.2-133.9)	Christian	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters (0.0-2.9)	Caldwell	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters (0.0-1.4)	Christian	WAH, PCR, SCR, OSRW	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Mouth to headwaters (0.0-10.5)	Trigg	CAH, PCR, SCR	
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters (3.0-9.1)	Trigg	WAH, PCR, SCR, OSRW	
<u>Cumberland River</u>	<u>0.2 Mile Downstream of Hickory Creek to 0.6 mile Upstream of Sugar Creek (10.2-11.9)</u>	<u>Livingston</u>	<u>WAH, PCR, SCR, OSRW</u>	
Donaldson Creek of Cumberland River	Barkley Lake Backwaters to Unnamed Tributary (4.0-7.2)	Trigg	WAH, PCR, SCR, OSRW	
Elk Fork of Red River of Cumberland River	Tennessee State Line to Dry Branch (7.5-23.1)	Todd	WAH, PCR, SCR, OSRW	
Skinframe Creek	Livingston Creek to Headwaters (0.0-7.8)	Lyon	CAH, PCR, SCR	
Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary (2.2-6.9)	Livingston	WAH, PCR, SCR, OSRW	
Sulphur Spring Creek	Red River to Headwaters (0.0-9.1)	Simpson	CAH, PCR, SCR	
West Fork of Red River	State Line to River Mile <u>32.2 (14.75-32.2)</u> 29.0 (14.5-32.2)	Christian	CAH, PCR, SCR, OSRW	
Whipporwill Creek	Red River to Headwaters (0.0-45.4)	Logan/Todd	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek	Basin above River Mile 1.0	Knox	WAH, PCR, SCR, OSRW	
Adams Branch of Pigeon Roost Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Archers Creek of Cumberland River	Basin (above RM 0.05 mi backwater at mouth)	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch of Poor Fork of Cumberland River	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bark Camp Creek of Cumberland River	Basin (above RM 0.1 backwater at mouth)	Whitley	CAH, PCR, SCR, OSRW	
Barren Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Beaver Creek of Cumberland River	Basin	McCreary	CAH, PCR, SCR, OSRW	
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch (0.0-5.7)	Pulaski	WAH, PCR, SCR, OSRW	
Bens Fork of Little Clear Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Big Branch of Marsh Creek	Basin above River Mile 0.8	McCreary	WAH, PCR, SCR, OSRW	
Big Lick Branch of Cumberland River	Basin (above 1.1, Cumberland River backwaters)	Pulaski	WAH, PCR, SCR, OSRW	

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Blacksnake Branch of Brownies Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Breedens Creek of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Brices Creek of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Brownies Creek of Cumberland River	Basin above Blacksnake Branch (RM 10.3)	Harlan	WAH, PCR, SCR, OSRW	
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek (1.1-7.6)	Rockcastle	WAH, PCR, SCR, OSRW	
Brushy Creek of Buck Creek	Mouth to Headwaters (0.0-16.5)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Cumberland River	River Mile 11.7 (Backwaters of Lake Cumberland) to RM 55.0 (0.8 RM upstream of confluence of Hurricane Creek)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Clear Fork of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bucks Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River	Basin above Kentucky/ Tennessee State Line	Whitley	WAH, PCR, SCR, OSRW	
Bunches Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Campbell Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cane Creek of Rockcastle River	Mouth to Dam (0.0-11.85)	Laurel	WAH, PCR, SCR, OSRW	
Caney Creek of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Cannon Creek of Yellow Creek	Basin above Cannon Creek Lake (RM 5.1)	Bell	WAH, PCR, SCR, OSRW	
Capuchin Creek of Jellico Creek	Basin from Mouth to Kentucky/Tennessee State Line (0.0-1.25)	McCreary	WAH, PCR, SCR, OSRW	
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch (3.45-7.8)	Rockcastle	WAH, PCR, SCR, OSRW	
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch (0.0-2.7)	Pulaski	WAH, PCR, SCR, OSRW	
Clover Bottom Creek	Horse Lick Creek to River Mile 1.4	Jackson	CAH, PCR, SCR	
Cogur Fork of Indian Creek	Basin	McCreary	CAH, PCR, SCR, OSRW	
Coles Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Colliers Creek of Poor Fork of Cumberland River	Basin	Bell	WAH, PCR, SCR, OSRW	
Crisillis Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	River Mile 549.65 (Backwaters Lake Cumberland) to River Mile 566.1 (0.2 mile below Summer Shoals)	McCreary/ Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	Kentucky/Tennessee state line (River Mile 379.8) to River Mile 456.7 (Lake Cumberland Dam)	Clinton, Cumberland, Russell, Monroe	CAH, PCR, SCR	
Davis Branch of Little Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Dog Slaughter Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Dolen Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Eagle Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
Elisha Branch of Laurel Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
FishTrap Branch	Basin above River Mile 0.5 (Lake Cumberland backwaters)	McCreary	WAH, PCR, SCR, OSRW	
Four Mile Creek of Cumberland River	Basin above River Mile 2.5	Bell	WAH, PCR, SCR, OSRW	
Four Mile Run of Yellow Creek Bypass	Basin above River Mile 1.0	Bell	WAH, PCR, SCR, OSRW	

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Fugitt Creek of Clover Fork of Cumberland River	Basin	Harlan	CAH, PCR, SCR, OSRW	
Hale Fork of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Hawk Creek of Rockcastle River	Basin	Laurel	CAH, PCR, SCR	
Hinkle Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Honeycutt Branch of Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Horse Lick Creek	Mouth (0.0) at Middle Fork of Rockcastle River to River Mile 12.3 (Clover Bottom Creek)	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW	
Howards Creek of Illwill Creek of Wolf River	Dale Hollow Reservoir Backwaters to Headwaters	Clinton	WAH, PCR, SCR, OSRW	
Hunting Shirt Branch of Richland Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Kilburn Fork to Barren Fork (2.4-6.8)	McCreary	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Basin above and including Barren Fork	McCreary	CAH, PCR, SCR, OSRW	
Jackie Branch of Bark Camp Creek	Mouth to Headwaters (0.0-1.65)	Whitley	CAH, PCR, SCR, OSRW	
Jellico Creek of Cumberland River	River Mile 22.5 (confluence with Capuchin Creek) to River Mile <u>25.25 [25-3]</u> (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
Jellico Creek of Cumberland River	<u>Basin From and Including Capuchin Creek to the Kentucky/Tennessee State Line (22.5 to 25.25)</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>	
Jennys Branch of Laurel Creek [Fork] of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Kelly Branch of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Kennedy Creek of Little South Fork of Cumberland River	Little South Fork of Cumberland River to River Mile 1.0	Wayne	WAH, PCR, SCR, OSRW	
<u>Kettle Creek</u>	<u>Kentucky/Tennessee State Line to Wells Creek (1.75-6.1)</u>	<u>Monroe</u>	<u>WAH, PCR, SCR, OSRW</u>	
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Creek of Marsh Creek	River Mile 3.1 (Jennys Branch) to River Mile 9.0 (Dam)	McCreary	CAH, PCR, SCR, OSRW	
<u>Laurel Creek of Marsh Creek</u>	<u>Basin above Mouth of Jennys Branch to Laurel Creek Lake Dam (3.2-9.0)</u>	<u>McCreary</u>	<u>WAH, CAH, PCR, SCR, OSRW</u>	
Laurel Fork of Clear Fork of Cumberland River	Basin above River Mile 16.0 (John Partin Road off Hwy 190)	Bell	WAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork of Cumberland River	River Mile <u>4.3 [4-25]</u> (Kentucky/Tennessee state line) to River Mile 16.0 (John Partin Road off Hwy 90)	Whitley	WAH, PCR, SCR, OSRW	
Laurel Fork of Kilburn Fork	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Fork of Middle Fork Rockcastle River	Middle Fork of Rockcastle River to Headwaters (0.0-12.3)	Jackson	WAH, PCR, SCR, OSRW	
Laurel River	River Mile 0.9 to Laurel River Lake Dam (0.9-2.4)	Laurel, Whitley	CAH, PCR, SCR	
Lick Fork of Yellow Creek By-Pass of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Little Popular Creek of Cumberland River	Basin above Hubbs Creek (4.4)	Knox	WAH, PCR, SCR, OSRW	
Little South Fork of Cumberland River	River Mile 4.4 (backwaters of Lake Cumberland) to River Mile 35.5 (Confluence with Langham Branch)	Wayne, McCreary	WAH, PCR, SCR, OSRW	
<u>Little White Oak Creek</u>	<u>Mouth to Headwaters (0.0-2.6)</u>	<u>Laurel</u>	<u>WAH, PCR, SCR, OSRW</u>	
Long Branch of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Looney Creek of Poor Fork of Cumberland River	Basin above River Mile 5.9 (Lynch City Limits)	Harlan	CAH, PCR, SCR	

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Marsh Creek	Basin above River Mile 24.6 (Confluence with Murphy Creek) to River Mile 26.5 (within Kentucky)	McCreary	WAH, PCR, SCR, OSRW	
Marsh Creek	River Mile 0.05 (confluence with Cumberland River) to River Mile 24.6 (confluence with Murphy Creek)	McCreary	WAH, PCR, SCR, OSRW	
Martins Fork	Basin above River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell	CAH, PCR, SCR	
Martins Fork	River Mile 27.2 to River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell, Harlan	CAH, PCR, SCR, OSRW	
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch (0.8-6.2)	Monroe	WAH, PCR, SCR, OSRW	
<u>Meadow Branch of Poor Fork Cumberland River</u>	<u>Mouth to River Mile 1.95 and Basin above the East-Southeast Unnamed Tributary</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, OSRW</u>	
Meadow Fork of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
Meshack Creek of Cumberland River	Mouth to Pitcock Branch (0.0-2.8)	Monroe	WAH, PCR, SCR, OSRW	
Middle Fork of Rockcastle River	Confluence of Middle and South Forks of Rockcastle River (River Mile 0.0) to River Mile 7.9 (confluence of Indian Creek and Laurel Fork)	Jackson	WAH, PCR, SCR, OSRW	
Mill Branch of Stinking Creek	Basin above reservoir backwaters (0.8)	Knox	WAH, PCR, SCR, OSRW	
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Mill Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
Moore Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mud Creek of Clear Fork of Cumberland River	Basin above River Mile 6.5 (0.3 river miles above Siler Cemetery Road Bridge)	Whitley	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Mouth to Collins Branch (0.0-1.2)	Cumberland	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Unidentified Tributary to Headwaters (3.8-8.8)	Cumberland/Monroe	WAH, PCR, SCR, OSRW	
Mud Lick of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Ned Branch of Rockcastle River	Basin above backwaters (RM 0.45)	Laurel	WAH, PCR, SCR, OSRW	
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork (14.0-22.1)	Wayne	WAH, PCR, SCR, OSRW	
Patterson Creek of Cumberland River	Basin above River Mile 7.3 (confluence with Rose Creek)	Whitley	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Franks Creek to Headwaters (41.4-51.7)	Letcher	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)	Letcher	CAH, PCR, SCR, OSRW	
Presley House Branch of Poor Fork of Cumberland River	Mouth to Headwaters (0.0-1.5)	Letcher	WAH, PCR, SCR, OSRW	
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.85)	McCreary	WAH, PCR, SCR, OSRW	
Richland Creek of Cumberland River	Basin above River Mile 15.8 (0.5 stream miles above Hubbard Branch) to River Mile 21.4	Knox	WAH, PCR, SCR, OSRW	
Roaring Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Rock Creek of South Fork of Cumberland River	Kentucky/Tennessee State Line (River Mile 21.5) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW	
Rock Creek of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	

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Rockcastle River	River Mile 8.95 (backwaters of Lake Cumberland) to River Mile 54.7 (confluence of Middle Fork and South Fork Rockcastle River)	Laurel/ Pulaski	WAH, PCR, SCR, OSRW	
Ross Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Roundstone Creek of Rockcastle River	River Mile 13.5 (confluence of Renfro Creek) to River Mile 26.4 (Interstate - 75)	Rockcastle	WAH, PCR, SCR, OSRW	
Ryans Creek of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Sanders Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Cumberland Gap National Historical Park Boundary to Headwaters (1.5-5.5)	Bell	CAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Mouth to Cumberland Gap National Historical Park Boundary (0.0-1.5)	Bell	WAH, PCR, SCR, OSRW	
Shut-in Branch of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Sinking Creek	Headwaters to Rockcastle River (0.0-20.3)	Laurel	WAH, PCR, SCR, OSRW	
Sims Fork of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Cumberland River	River Mile 44.3 (Blue Heron) to River Mile 54.8 (Kentucky /Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to White Oak Creek (River Mile 5.8)	Laurel	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	Rockcastle River (River Mile 0.0) to River Mile 2.1	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch of Bennetts Fork of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters (1.7-5.1)	Clinton	WAH, PCR, SCR, OSRW	
Trace Branch of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Tyes Fork of Bennetts Fork of Patterson Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
<u>Unidentified Tributary of Cane Creek of Rockcastle River</u>	<u>Mouth to Headwaters (0.0-1.2)</u>	<u>Laurel</u>	<u>WAH, PCR, SCR, OSRW</u>	
Unidentified Tributary (across from Hemlock Grove <u>at river mile 9.3 of Rock Creek</u>) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.2)	McCreary	WAH, PCR, SCR, OSRW	
Unidentified Tributary (RMI <u>17.05 [17.0]</u> of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0- <u>1.9 [1-3]</u>)	McCreary	WAH, PCR, SCR, OSRW	
Watts Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Watts Creek of Cumberland River	Basin above Camp Blanton Lake (2.4)	Harlan	WAH, PCR, SCR, OSRW	
White Oak Creek of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
White Oak Creek of Sinking Creek	Basin above River Mile 0.9 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	
<u>Wolf Creek of Clear Fork</u>	<u>Basin above Little Wolf Creek (2.0-5.9)</u>	<u>Whitley</u>	<u>WAH, PCR, PSCR, OSRW</u>	
Wood Creek of Little Rockcastle River	Confluence with Hazel Patch Creek (0.0) to River Mile 1.9 (Wood Creek Lake Dam)	Laurel	CAH, PCR, SCR	

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Youngs Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR	
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR	
Laurel River	Entire Reservoir	Laurel/ Whitley	WAH, CAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR	
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State Line (15.15-18.7)	Calloway	WAH, PCR, SCR, OSRW	
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek (28.6-30.6) [(28.7-30.7)]	Marshall	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.7-2.9)	Calloway	WAH, PCR, SCR, OSRW	
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.5-5.7)	Calloway	WAH, PCR, SCR, OSRW	
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek (0.0-5.7)	Marshall	WAH, PCR, SCR, OSRW	
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road (2.5-3.2)	Calloway	WAH, PCR, SCR, OSRW	
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir (0.0-3.9)	Graves	WAH, PCR, SCR, OSRW	
<u>Tennessee River</u>	<u>River 12.0 (approximately 0.4 miles above Mud Creek) to 22.8 (Kentucky Lake Dam)</u>	<u>Livingston-Marshall</u>	<u>WAH, PCR, SCR, OSRW</u>	
Tennessee River	River Mile 23.1 (Kentucky Lake Dam) to River Mile 12.4 (12.4-23.1)	Livingston/McCracken/Marshall	WAH, PCR, SCR, OSRW	
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch (0.0-3.35)	Graves	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters (0.0-1.7)	Graves	WAH, PCR, SCR, OSRW	
West Fork of Clarks River	Soldier Creek to Duncan Creek (20.1-23.5)	Graves	WAH, PCR, SCR, OSRW	
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters (3.6 [2.8]-6.8)	Calloway	WAH, PCR, SCR, OSRW	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
<u>Ashbys Fork</u>	<u>Mouth to Petersburg Road (SR 20) (0.0-3.7)</u>	<u>Boone</u>	<u>WAH, PCR, SCR, OSRW</u>	
Crooked Creek	Rush Creek to City Lake Dam (17.9-26.2)	Crittenden	WAH, PCR, SCR, OSRW	
Doe Run Creek	Hwy 1638 to Headwaters (5.2-8.3)	Meade	CAH, PCR, SCR	
Double Lick Creek of Woolper Creek	Mouth to Headwaters (0.0-3.5)	Boone	WAH, PCR, SCR, OSRW	
Garrison Creek	Mouth to Headwaters (0.0-4.85)	Boone	WAH, PCR, SCR, OSRW	
Kinniconick Creek	McDowell Creek to Headwaters (5.05-50.9)	Lewis	WAH, PCR, SCR, OSRW	
Little South Fork of Big South Fork	Land Use Change to Headwaters (1.2-5.9)	Boone	WAH, PCR, SCR, OSRW	
Middle Fork of Massac Creek	Hines Road to Headwaters (3.1-6.4)	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
<u>Ohio River</u>	<u>River Mile 856.4-852.0</u>	<u>Union</u>	<u>WAH, PCR, SCR, OSRW</u>	
Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	

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Ohio River	River Mile 923.5 to River Mile 926.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 927.0 to River Mile 930.0	Livingston	WAH, PCR, SCR, OSRW	
<u>Ohio River</u>	<u>River Mile 933.0 to 937.0</u>	<u>McCracken</u>	<u>WAH, PCR, SCR, OSRW</u>	
Ohio River	River Mile <u>937.0</u> [940.7] to River Mile <u>939.8</u> [943.3]	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 948.2 to River Mile 949.5	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 960.0 to River Mile 962.7 (above Lock and Dam 53)	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Otter Creek	Ohio River to River Mile 9.7	Meade	CAH, PCR, SCR	
Second Creek	Ohio River Backwaters to Headwaters (0.2-2.7)	Boone	WAH, PCR, SCR, OSRW	
Sinking Creek	Hwy 259 to Headwaters (includes Blue & Stony Forks)	Breckinridge	CAH, PCR, SCR	
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters (1.0-3.4) [(1.0-1.8)]	Gallatin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Corn Creek	Mouth to Headwaters (0.0-2.3)	Trimble	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Massac Creek	Mouth to Headwaters (0.0-1.7)	McCracken	WAH, PCR, SCR, OSRW	
West Fork of Massac Creek	SR 724 [725] to Little Massac Creek (1.0-6.2)	McCracken	WAH, PCR, SCR, OSRW	
White Oak Creek	Mouth (Ohio River) to River Mile 1.08	Greenup	SCR	401 KAR 10:031, Section 2(1)(d) and 2(2) do not apply.
Yellowbank Creek	Ohio River Backwaters to Headwaters (1.5-11.8) [(1.8-11.8)]	Breckinridge	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
Bayou de Chien	River Mile 15.4 to Headwaters (River Mile 32.9)	Hickman/Graves	WAH, PCR, SCR, OSRW	
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile <u>947.0</u> [935.0] to River Mile <u>942.3</u> [930.0]	<u>Hickman</u> [Carlisle]	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile <u>959.1</u> [947.0] to River Mile <u>957.1</u> [945.0]	Carlisle	WAH, PCR, SCR, OSRW	
Obion Creek	Hurricane Creek to Little Creek (26.35-36.55)	Hickman	WAH, PCR, SCR, OSRW	
Sand Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
South Fork of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Terrapin Creek	Tennessee State Line to Headwaters (2.7-6.0)	Graves	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
Swan Pond	Entire Lake	Ballard	WAH, PCR, SCR, OSRW	

Section 6. Incorporation by Reference. (1) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 5:00 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: Peter Goodmann, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Peter.Goodmann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation lists the types of designated uses for surface waters of the Commonwealth, provides for redesignation of surface waters, describes the process for redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the reader of the types of designated use categories for surface waters of the Commonwealth, to provide for redesignation of surface waters, and to list designated uses assigned to surface waters. The list of designated uses assigned to specific surface waters of the Commonwealth is a reference tool necessary for the reader to identify which designated uses apply to specific surface waters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth and thus manage water resources and prevent water pollution. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

(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 statutes by providing for redesignation of surface waters and by listing the designated uses assigned to specific waters of the Commonwealth. Having the designated uses listed in this way will enable the reader to know which regulatory criteria relate to which water. This information is supportive to achieving compliance with administrative regulations.

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

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment strikes citations to an outdated Executive Order. The amendment updates Table B, which where indicates locations of domestic water supply criteria are applicable, adding 16 water segments. In Table C, which lists designated uses, the amendment adds 27 outstanding state resource waters (OSRWs), or new segments. Other minor amendments are proposed to comply with regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to protect the Commonwealth's Outstanding State Resource Waters. Other minor amendments are proposed to comply with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes. This amendment conforms to KRS 224.10-100 that requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This amendment applies the standards to protect designated uses described in 401 KAR 10:031 to surface waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates waters listed in specific designated uses based on the most recent scientific information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses to the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If a regulated entity applies for a permit for a new or expanded discharge into an OSRW, the permit limits imposed on a discharger may result in additional or reduced treatment outlays, training costs, or operational changes. Those changes are dependent upon the nature of the discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary depending on the site location, the type of activity occurring, and other factors. Sixteen of the 27 proposed new Outstanding State Resource Waters (OSRWs) are identified as such because of excellent biological communities (fish or macroinvertebrates) that qualify them as exceptional waters, as required by 401 KAR 10:030. The other eleven are OSRWs because they contain federally threatened or endangered species. Most of these proposed new OSRWs are in less developed parts of the state with few existing entities that discharge into these waters. There is one criterion that applies to all OSRWs, which is the requirement for dissolved oxygen, established in 401 KAR 10:031, Section 4. The purpose of this standard is to provide additional protection to the biological community for a critical component (oxygen) of the stream environment. It is anticipated that costs associated with complying with this proposed requirement will be minimal, given that compliance with dissolved oxygen standards can be readily achieved with existing treatment technology.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: There are no initial costs as a result of amending this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding is the General Fund, as appropriated by the Kentucky General Assembly, and federal 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 in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Any discharger into a water designated as cold water aquatic habitat will require dischargers into such water to meet requirements outlined in 401 KAR 10:031 that are more stringent than requirements for dischargers into surface water designated warm water aquatic habitat. Any discharger into a water designated as an outstanding resource water by this administrative regulation will also have special requirements as outlined in 401 KAR 10:031. Waters listed in Table B as having a surface water intake will have Domestic Water Supply criteria found in 401 KAR 10:031, Section 6.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to designated uses to the surface waters of the Commonwealth. All governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they will have discharges into surface waters of the Commonwealth that have been re-designated by this amended regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

3. 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. 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 new revenue will be generated.

(a) 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 new revenue will be generated.

(b) How much will it cost to administer this program for the first year? There will be no costs

(c) How much will it cost to administer this program for subsequent years? There will be no cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amended administrative regulation establishes instream uses designated by the cabinet that, in combination with criteria found in 401 KAR 10:031, provide for protection of water quality of the state's waters. Local governments will be required to discharge effluents that assure attainment of the receiving surface water's designated uses. Criteria that apply to these re-designations will be implemented at the time of permit issuance. Local governments withdrawing drinking water from these waters may have lower treatment costs because these waters have lower pollutant loads. Additional costs may be incurred

where criteria are more stringent or where new criteria are established and less cost may be incurred where criteria are less stringent than previously or where criteria have been eliminated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards. 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 176.430, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100 - 224.71-145, 224.73-100 - 224.73-120, 30 U.S.C. 1201 -1328

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 requires[declares] that the policy of the Commonwealth is to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and

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each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the

commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1 SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER			
Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	<u>50.3 to 70.4</u> [49.2 to 68.6]	Menifee/ <u>Powell</u> /Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/ Hart/Barren
South Fork of Cumberland River	Downstream Wild River Boundary to Tennessee State line	44.3 to 54.8	McCreary
Surface Waters within Reelfoot Lake National Wildlife Refuge	Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky	2040 Acres	Fulton
War Fork of Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0.0 to 13.8	Jackson
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to <u>14.7</u> [15.0]	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge	8.95 to 22.4	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and

2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.

2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER			
Stream	Segment	River Miles	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters	0.0-3.9	Martin
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line	15.0-16.5	Pike
Toms Branch of Elkhorn Creek	Mouth to Headwaters	0.0-1.6	Pike
<u>Thompson Fork of Souders Branch</u>	<u>Mouth to Headwaters</u>	<u>0.0 - 1.0</u>	<u>Floyd</u>
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters	0.0-0.6	Martin
<u>Unidentified Tributary of Open Fork Paint Creek</u>	<u>Moth to Headwaters</u>	<u>0.0 - 0.8</u>	<u>Morgan</u>
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters	0.0-5.1	Elliott
Big Caney Creek	Grayson Lake to Headwaters	1.8-15.3	Elliott, Rowan
Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and <u>Arabs</u> [Arab] Fork	<u>11.0 - 15.9</u> [6.1- 45.8]	Carter, Elliott
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters	0.0-1.4	Elliott
Middle Fork of Little Sandy River	Mouth to Sheepskin Branch	0.0-3.4	Elliott
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters	0.0-2.0	Elliott

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Laurel Creek of Little Sandy River*	Carter School Rd Bridge to Headwaters	7.6-14.7	Elliott, Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River*	Eaton Creek to Greasy Fork	3.8-11.7	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River*	Mouth to Landuse Change	0.0-2.1	Menifee
Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek*	Cave Run Lake Backwaters to Headwaters	0.7-5.6	Menifee
Brushy Fork of South Fork of Grassy Creek	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork of Licking River*	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork of Licking River*	Mouth to Headwaters	0.0-8.5	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek*	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	<u>159.3 - 170.5</u> <u>[159.5-170.6]</u>	Bath, Rowan
North Fork of Licking River*	Cave Run Lake Backwaters to Devils Fork	8.4-13.4	Morgan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River*	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork of Licking River*	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek of Licking River*	Mouth to Headwaters	0.0-9.8	Harrison, Robertson
KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River*	Mouth to Scrabble Creek	0.0-1.65	Franklin, Henry, Shelby
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River*	Mouth to confluence of Left and Right Forks of Big Double Creek	0.0-4.4	Clay
Bill Branch of Laurel Fork of Greasy Creek*	Mouth to Right Fork and Left Fork Creek	0.0-0.3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2.6-8.8	Lee, Elliott
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	0.0-0.9	Scott
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.6	Owsley
<u>Bullskin Creek of South Fork Kentucky River</u>	<u>Mouth to Headwaters</u>	<u>0.0 - 14.6</u>	<u>Clay</u>
Buffalo Creek of South Fork of Kentucky River*	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Cavanaugh Creek*	South Fork of Station Camp Creek to Foxtown Rd	0.0-8.3	Jackson
Chester Creek of Middle Fork of Red River*	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek of Kentucky River*	Mouth to East Fork Clear Creek	0.0-9.0	Woodford
Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-4.8	Breathitt
Coles Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-6.2	Breathitt
Craig Creek of Kentucky River*	Mouth to Unidentified Tributary	0.5-2.7	Woodford
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River*	Fivemile Creek to Town Branch	8.7-12.2	Henry

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East Fork of Indian Creek of Indian Creek of Red River	West Fork of Indian Creek to Headwaters	0.0-9.0	Menifee
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0.8-1.8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0.0-4.0	Henry
Evans Fork of Billy Fork of Millers Creek	Mouth to Headwaters	0.0-3.0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-0.7	Breathitt
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	0.0 to 2.6	Anderson
Gladie Creek of Red River	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek	0.0-9.1	Clay, Leslie
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3.5	Woodford
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters	0.1 to 1.9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary	0.1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters	0.0-1.35	Leslie
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters	0.0-1.8	Jackson
Indian Creek of Eagle Creek	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-1.2	Breathitt
Joyce Fork of Cortland Fork	Mouth to Headwaters	0.0 - 1.2	Owsley
Katies Creek of Red Bird River	Mouth to Headwaters	0.0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*	Cortland Fork to Big Branch	0.0-3.75	Owsley
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters	0.0-1.5	Clay
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters	12.2-28.6	Letcher
Little Middle Fork of Elisha Creek of Red Bird River*	Mouth to Headwaters	0.0-0.75	Clay
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters	0.0-5.3	Henry
Little Sturgeon Creek of Sturgeon Creek	Mouth to Warren Chapel Branch	0.0 - 3.0	Owsley
Low Gap Branch of Elk Creek	Mouth to Headwaters	0.0 - 0.8	Letcher
Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek	0.0 - 4.65	Lee
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-7.2	Powell
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Kentucky River	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Creek	13.8-20.65	Madison
Musselman Creek of Eagle Creek	Mouth to Headwaters	0.0-9.0	Grant
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek	0.0-15.3	Clay

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Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork of Kentucky River	Mouth to Sexton Creek	0.0-27.8	Owsley
South Fork of Red River	Mouth to Sandlick Fork	0.0-4.2	Powell
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River	Mouth to Headwaters	0.0-1.0	Clay
Station Camp Creek of Kentucky River	Landuse Change to South Fork of Station Camp Creek	18.0-22.8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4.2	Fayette
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River	Landuse Change to Headwaters	0.6-5.4	Leslie
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5.2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters	0.0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters	0.0-1.4	Owen
Unidentified Tributary of Glens Creek of Kentucky River	Mouth to Headwaters	0.0 to 1.9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters	0.0-1.15	Madison
Unidentified Tributary of Kentucky River	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters	0.0-0.6	Letcher
War Fork of Station Camp Creek	Mouth to Headwaters	0.0-13.8	Jackson
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-1.0	Owsley
Wolfpen Creek of Red River	Mouth to Headwaters	0.0-3.6	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	13.0-25.9	Shelby, Spencer
Cedar Creek of Salt River	Mouth to Greens Branch	0.0-5.2	Bullitt
Chaplin River of Salt River	Thompson Creek to Cornishville, KY	40.9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0.0-3.8	Boyle
Guist Creek of Brashears Creek	Mouth to Jeptha Creek	0.0-15.7	Spencer
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters	0.0- <u>2.3</u> [1-8]	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0.0-0.9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River*	Mouth to 0.1miles below Dam	0.0-4.1	Washington
Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2.9	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek	0.0-3.2	Bullitt
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters	0.0-8.6	Larue, Marion
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10.0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of	Mouth to Headwaters	0.0-2.3	Washington

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Chaplin River			
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters	0.0- 5.4 [5-1]	Larue
Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters	0.0-18.4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13.0-17.3	Green
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters	0.8-6.5	Hart
Caney Fork of Peter Creek	Mouth to Headwaters	0.0-6.7	Barren
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick	7.6-13.4	Todd
East Fork of Little Barren River	Red Lick Creek to Flat Creek	18.9-20.7	Metcalfe
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3.6 to 11.8	Logan [Allen]
Ellis Fork of Damron Creek	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters	10.8-15.2	Barren, Metcalfe
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters	0.0-5.9	Breckinridge
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary	0.0-4.1	Christian
Gasper River of Barren River	Clear Fork to Wiggington Creek	17.2-35.6	Logan, Warren
Goose Creek of Green River	Mouth to Little Goose Creek	0.0-8.5	Casey, Russell
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	185.0-250.3	Edmonson, Hart
Halls Creek of Rough River	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River	Mouth to Sutzer Creek	0.0-7.9	Hardin
Little Beaverdam Creek of Green River	Mouth to SR 743	0.0-11.65	Edmonson, Warren
Little Short Creek of Rough River	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek of Green River	Mouth to Lindy Creek	0.0-8.5	Hart
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch	5.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork of Rough River	Buffalo Creek to Reservoir Dam	22.1-26.9	Breckinridge
Peter Creek of Barren River	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0.0-3.8	Logan
Rough River	Linders Creek to Vertrees Creek	138.0-149.4	Hardin
Russell Creek of Green River	Mouth to Columbia WWTP	0.0-40.0	Green, Adair
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek	Mouth to Headwaters	0.0-3.0	Edmonson
Thompson Branch of West Fork of Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek	Mouth to Tennessee State Line	0.0-30.6	Allen, Warren
Unidentified Tributary of Green River	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River	12.45-22.5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Elk Fork of Red River of Cumberland River	Tennessee State Line to Dry Branch	7.5-23.1	Todd

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Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork of Red River of Cumberland River	Tennessee State Line to Montgomery Creek	<u>14.75 - 26.85</u> [16.1-26.5]	Christian
Whippoorwill Creek of Red River of Cumberland River	Mouth to Vicks Branch	0.0-13.2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State Line	15.15-18.7	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	<u>28.6 - 30.6</u> [28.7-30.7]	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters	0.7-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters	0.5-5.7	Calloway
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek	0.0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road	2.5-3.2	Calloway
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir	0.0-3.9	Graves
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch	0.0-3.35	Graves
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters	0.0-1.7	Graves
West Fork of Clarks River	Soldier Creek to Duncan Creek	20.1-23.5	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters	<u>3.6</u> [2.8] -6.8	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River	Landuse Change to Headwaters	2.15-4.6	Caldwell
Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell, Christian
Sandlick Creek of Tradewater River	Camp Creek to Headwaters	4.5-8.6	Christian
Tradewater River	Dripping Springs Branch to Buntin Lake Dam	<u>125.8</u> [126.2] - 133.9	Christian
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters	0.0-2.9	Caldwell
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			
<u>Ashbys Fork</u>	<u>Mouth to Petersburg Road (SR 20)</u>	<u>0.0 - 3.7</u>	<u>Boone</u>
Crooked Creek	Rush Creek to City Lake Dam	<u>17.9 - 26.2</u> [18.1-26.4]	Crittenden
Double Lick Creek of Woolper Creek	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek	Mouth to Headwaters	0.0-4.85	Boone
Kinniconick Creek	McDowell Creek to Headwaters	<u>5.05</u> [5.2] -50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.8	Boone
Middle Fork of Massac Creek	Hines Road to Headwaters (Pond)	3.1-6.4	McCracken
Second Creek	Ohio River Backwaters to Headwaters	<u>0.2 - 2.7</u> [0.4-2.9]	Boone
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters	1.0- <u>3.5</u> [1.8]	Gallatin
Unidentified Tributary of Corn Creek	Mouth to Headwaters	0.0-2.3	Trimble
<u>Unidentified Tributary of Unidentified Tributary of Corn Creek</u>	<u>Unidentified Tributary to Headwaters</u>	<u>0.15 - 2.2</u>	<u>Trimble</u>
Unidentified Tributary of Massac Creek	Mouth to Headwaters	0.0-1.7	McCracken
West Fork of Massac Creek	SR 724 to Little Massac Creek	3.6-6.2	McCracken
Yellowbank Creek	Ohio River Backwaters to Headwaters	<u>1.5 - 11.8</u> [2.0-12.0]	Breckinridge
LAKE			
Metropolis	Entire Lake		McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek	Hurricane Creek to Little Creek	<u>26.35 - 36.5</u> [26.7-37.1]	Hickman

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Terrapin Creek *	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES			
Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			
Bad Branch of Poor Fork of Cumberland River *	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River *	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River *	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2.4-7.1	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River *	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek *	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Brushy Creek of Buck Creek *	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of Cumberland River *	0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	11.7-55.0	Lincoln, Pulaski
Bunches Creek of Cumberland River *	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River *	Mouth to Headwaters	0.0-11.85	Laurel
<u>Clear Creek of Roundstone Creek</u>	<u>Scaffold Cane Branch to Davis Branch</u>	<u>3.45 - 7.8</u>	<u>Rockcastle</u>
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of Indian Creek *	Mouth to Headwaters	0.0-7.95	McCreary
Cumberland River	Wild River Boundaries	549.65-566.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River *	Mouth to confluence of North Fork and South Fork of Dog Slaughter Creek	0.05-1.15	Whitley
Eagle Creek of Cumberland River *	Mouth to Headwaters	0.05-6.75	McCreary
Fugitt Creek of Clover Fork of Cumberland River *	Landuse Change to Headwaters	0.5-4.6	Harlan
Horse Lick Creek of Rockcastle River *	Mouth to Clover Bottom	0.0-12.3	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River *	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton
Indian Creek of Cumberland River *	Laurel Fork to Barren Fork	2.4-6.8	McCreary
Jackie Branch of Bark Camp Creek *	Mouth to Headwaters	0.0-1.65	Whitley
<u>Kettle Creek</u>	<u>Kentucky / Tennessee State Line to Wells Creek</u>	<u>1.75 - 6.1</u>	<u>Monroe</u>
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0.0-9.0	McCreary
Laurel Fork of Clear Fork of Cumberland River *	Tennessee State Line to Tiny Branch	4.3-13.1	Whitley
Laurel Fork of Middle Fork of Rockcastle River *	Mouth to Headwaters	0.0-12.3	Jackson
Left Fork of Fugitt Creek of Clover Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork of Cumberland River *	Lake Cumberland Backwaters to Langham Branch	4.4-35.5	McCreary, Wayne
<u>Little White Oak Creek</u>	<u>Mouth to Headwaters</u>	<u>0.0 - 2.6</u>	<u>Laurel</u>
Marsh Creek of Cumberland River *	Laurel Creek to Kentucky/Tennessee State Line	8.8-26.5	McCreary
Martins Fork of Cumberland River	Rough Branch to Headwaters	27.2-32.7	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe
Middle Fork of Rockcastle River *	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River *	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River *	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	14.0-22.1	Wayne

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Poor Fork of Cumberland River*	Franks Creek to Headwaters	42.1-52.4	Letcher
Presley House Branch of Poor Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-1.85	McCreary
Rock Creek of South Fork of Cumberland River	White Oak Creek to Tennessee State Line	4.0-21.5	McCreary
Rockcastle River	Wild River Boundaries	8.95-54.7	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters	1.7-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River	Mouth to Headwaters	0.0-4.6	Whitley
South Fork of Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	0.0 - 1.2	Laurel
Unidentified Tributary (across from Hemlock Grove) at River mile 9.3 of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-1.3	McCreary
Unidentified Tributary (RMI 17.05 [17.0] of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0- 1.9 [1.2]	McCreary
Watts Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River	Camp Blanton Reservoir to Headwaters	2.4-4.4	Harlan

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:

1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Surface water is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1, 2, and 3 and Section 8(1)(b);

3. Surface water contains either of the following:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index", 2003; or

4. Surface water in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

1. The activities identified in this subparagraph shall not be subject to the antidegradation implementation procedures in paragraph (b) of this subsection.

a. The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge. The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 3. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. A general permit issued pursuant to 401 KAR 5:050 through 5:080.

(i) The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements.

(ii) If the activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph upon each general permit issuance.

(iii) If the requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.

(iv) The public shall be notified of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. A new or expanded discharge associated with a project identified in the Kentucky Transportation Cabinet's six (6) year road plan, as established in KRS 176.430.

(i) The alternatives analysis for lowering water quality requirement shall be satisfied if an alternatives analysis for the project has been submitted.

(ii) The socioeconomic demonstration shall be satisfied if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

(iii) An antidegradation review shall not be required for maintenance of existing highway facilities.

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080.

(i) If the activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph.

(ii) If the requirements and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the MS4 Permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.[.]

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider the following factors:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider the following factors:

(i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;

(ii) The use of best management practices to minimize impacts;

(iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;

(iv) Application of water conservation methods;

(v) Alternative or enhanced treatment technology;

(vi) Improved operation and maintenance of existing treatment systems;

(vii) Seasonal or controlled discharge options;

(viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and

(ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be submitted on the Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water

quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting[any] applicable designated uses.

2. A surface water designated as outstanding state resource water pursuant to the provisions of 401 KAR 10:031, Section 8 and listed in 401 KAR 10:026, Table C as an OSRW shall not be categorized as impaired water for the purposes of this administrative regulation. [A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026.]

3. A surface water shall not be categorized as impaired for the purposes of this administrative regulation if the surface water is listed only as mercury impaired for fish consumption.

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050 through 5:080.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026.

(1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and[any] comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent show-

ing those surface waters to be recategorized including a description consisting of a river mile index with[any] existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species off[any] unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3. of this administrative regulation are utilized.

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

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, April 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 5:00 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard

will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: Peter Goodmann, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Peter.Goodmann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control point source water pollution in waters affected by that policy.

(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 statutes by implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes 13 additional stream segments totaling 44.3 miles of surface waters newly categorized as exceptional water as a result of routing watershed monitoring and investigations of potential waters affected by permitted activities since the previous revisions to the regulations in 2008. Other minor amendments are proposed to comply with regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add waters that have been found to meet the criteria for Exceptional Water since the previous revisions. Other minor amendments are proposed to comply with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated

waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment adds water segments that meet the criteria for Exceptional Waters.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by listing surface waters newly categorized as exceptional.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation includes 13 additional stream segments, totaling 44.3 miles of surface waters, newly categorized as exceptional waters. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional water or high quality water could be affected by either stricter discharge limitations or the requirement to perform an alternatives analysis and socioeconomic demonstration.

(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 permit limitations imposed on new or expanded point source dischargers into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded point source dischargers covered under the Section 402 KPDES permit system may incur costs of alternatives and pollution prevention and socioeconomic analyses. This requirement already exists in state and federal law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Costs cannot be determined until an applicant applies for a permit for a new or expanded discharge, which is regulated under 401 KAR Chapter 5.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: There are no initial costs as a result of amending this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is used in this administrative regulation. However, the amendment does not change the way the regulation is tiered. This regulation tiers the requirements of the antidegradation policy implementation based on the water quality where the applicant proposes to discharge. There are three tiers of implementation of the antidegradation policy.

The requirements for the most protected waters, Outstanding National Resource Waters, are established in Section 1(1)(b). A discharger may not discharge into an Outstanding National Resource Water if the discharge may result in permanent or long-term changes in water quality.

The majority of waters in the Commonwealth are in the second

tier, Exceptional or High Quality Waters. The requirements for discharges to these categories of water are established in Section 1(3)(b). Applicants proposing a new or expanded discharge to these second-tier waters must demonstrate that the discharge will not exceed ten percent of the cumulative assimilative capacity of the receiving stream outside of a mixing zone, or demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

The final tier of requirements is for Impaired Waters, established in Section 1(4)(b). The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into outstanding national resource waters, exceptional waters, or high quality waters.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

3. 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.

(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.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement 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: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards. 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120[~~EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution.[~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion. Nutrients shall not be elevated in a surface water to a level that results in eutrophication.[~~Nutrient Limits. In lakes and reservoirs and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall be limited in accordance with:~~

- (1) ~~The scope of the problem;~~
- (2) ~~The geography of the affected area; and~~
- (3) ~~Relative contributions from existing and proposed sources.]~~

Section 2. Minimum Criteria Applicable to All Surface Waters.

(1) The following minimum water quality criteria shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

- (a) Settle to form objectionable deposits;
- (b) Float as debris, scum, oil, or other matter to form a nuisance;
- (c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f)1. Cause fish flesh tainting.

2. The concentration of phenol shall not exceed 300 mg[µg]/l as an instream value.

(2) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation are applicable to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health from the consumption of fish tissue, and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1×10^{-6} shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses and associated criteria protective of those uses. Those uses are listed in 401 KAR 10:026. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

- (a) Protect surface waters for the indicated use; and
- (b) Protect human health from fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

- (a) Aquatic life protection shall be $7Q_{10}$;
- (b) Water-based recreation protection shall be $7Q_{10}$;
- (c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and
2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection from fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreal growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO_3 shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/l CaCO_3 , there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;

(c) Flow shall not be altered to a degree that will adversely affect the aquatic community;

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be

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based on the effects of temperature on the aquatic biota that utilize specific surface waters of the commonwealth and that may be affected by person-induced temperature changes.

a. Effects on downstream uses shall also be considered in determining site-specific temperatures.

b. Values in the following table are guidelines for surface water temperature.

Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

3. A successful demonstration concerning thermal discharge limits carried out pursuant to [under] Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made;

(e) Dissolved oxygen.

1.a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/l as a twenty-four (24) hour average in water with WAH use;

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/l in water with WAH use.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities shall be prohibited;

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1.2 (\text{Total ammonia-N}) / (1 + 10^{pK_a - pH})$$

$$pK_a = 0.0902 + (2730 / (273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC_{25} .

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC_{25} .

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) mg[μg]/l or a chronic criteria value of eleven (11) mg[μg]/l.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/l as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/l as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(2)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed in Table 1 of this section.

Table 1

Pollutant	CAS ¹ Number	Water Quality Criteria mg[μg]/L ²			
		Human Health:		Warm Water Aquatic Habitat ³ :	
		DWS ⁴	Fish ⁵	Acute ⁶	Chronic ⁷
Acenaphthene	83329	670	990	-	-
Acrolein	107028	190	6 [290]	3 [-]	3 [-]
Acrylonitrile	107131	0.051	0.25	-	-

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Table 1					
Pollutant	CAS ¹ Number	Water Quality Criteria mg[µg]/L ²			
		Human Health:		Warm Water Aquatic Habitat ³ :	
		DWS ⁴	Fish ⁵	Acute ⁶	Chronic ⁷
Aldrin	309002	0.000049	0.000050	3.0	-
alpha-BHC	319846	0.0026	0.0049	-	-
alpha-Endosulfan	959988	62	89	0.22	0.056
Anthracene	120127	8,300	40,000	-	-
Antimony	7440360	5.6	640	-	-
Arsenic	7440382	10.0	-	340	150
Asbestos	1332214	7 million fibers/L	-	-	-
Barium	7440393	1,000	-	-	-
Benzene	71432	2.2	51	-	-
Benzidine	92875	0.000086	0.00020	-	-
Benzo(a)anthracene	56553	0.0038	0.018	-	-
Benzo(a)pyrene	50328	0.0038	0.018	-	-
Benzo(b)fluoranthene	205992	0.0038	0.018	-	-
Benzo(k)fluoranthene	207089	0.0038	0.018	-	-
Beryllium	7440417	4	-	-	-
Beta-BHC	319857	0.0091	0.017	-	-
Beta-Endosulfan	33213659	62	89	0.22	0.056
bis(chloromethyl)ether	542881	0.00010	0.00029	-	-
bis(2-chloroethyl)ether	111444	0.030	0.53	-	-
bis(2-chloroisopropyl)ether	108601	1,400	65,000	-	-
bis(2-ethylhexyl)phthalate	117817	1.2	2.2	-	-
Bromoform	75252	4.3	140	-	-
Butylbenzyl phthalate	85687	1,500	1,900	-	-
Cadmium	7440439	5	-	e(1.0166 (ln Hard*)-3.924)	e(0.7409 (ln Hard*)-4.719)
Carbon tetrachloride	56235	0.23	1.6	-	-
Chlordane	57749	0.00080	0.00081	2.4	0.0043
Chloride	16887006	250,000	-	1,200,000	600,000
Chlorobenzene	108907	130	1600	-	-
Chlorodibromomethane	124481	0.40	13	-	-
Chloroform	67663	5.7	470	-	-
Chloropyrifos	2921882	-	-	0.083	0.041
Chromium	N/A	100	-	-	-
Chromium (III)	16065831	-	-	e(0.8190 (ln Hard*)+3.7256)	e(0.8190 (ln Hard*)+0.6848)
Chromium (VI)	18540299	-	-	16	11
Chrysene	218019	0.0038	0.018	-	-
Color	N/A	75 Platinum Cobalt Units	-	-	-
Copper	7440508	1,300	-	e(0.9422 (ln Hard*)-1.700)	e(0.8545 (ln Hard*)-1.702)
Cyanide, Free	57125	140	140	22	5.2
Demeton	8065483	-	-	-	0.1
Diazinon	333415	-	-	0.17	0.17
Dibenzo(a,h)anthracene	53703	0.0038	0.018	-	-
Dichlorobromomethane	75274	0.55	17	-	-
Dieldrin	60571	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84662	17,000	44,000	-	-
Dimethyl phthalate	131113	270,000	1,100,000	-	-
Di-n-butyl phthalate	84742	2,000	4,500	-	-
Dinitrophenols	25550587	69	5300	-	-
Endosulfan sulfate	1031078	62	89	-	-
Endrin	72208	0.059	0.060	0.086	0.036
Endrin aldehyde	7421934	0.29	0.30	-	-
Ethylbenzene	100414	530	2100	-	-
Fluoranthene	206440	130	140	-	-
Fluorene	86737	1,100	5,300	-	-
Fluoride	N/A	4,000	-	-	-
Guthion	86500	-	-	-	0.01
Heptachlor	76448	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118741	0.00028	0.00029	-	-
Hexachlorobutadiene	87683	0.44	18	-	-

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Table 1					
Pollutant	CAS ¹ Number	Water Quality Criteria mg[µg]/L ²			
		Human Health:		Warm Water Aquatic Habitat ³ :	
		DWS ⁴	Fish ⁵	Acute ⁶	Chronic ⁷
Hexachlorocyclo-hexane-Technical	319868	0.0123	0.0414	-	-
Hexachlorocyclopentadiene	77474	40	1100	-	-
Hexachloroethane	67721	1.4	3.3	-	-
Ideno(1,2,3-cd)pyrene	193395	0.0038	0.018	-	-
Iron ⁸	7439896	300	-	4,000	1,000
Isophorone	78591	35.0	960	-	-
Lead	7439921	15	-	e(1.273 Hard*)-1.460) (In	e(1.273 Hard*)-4.705) (In
Lindane (gamma-BHC)	58899	0.98	1.8	0.95	-
Malathion	121755	-	-	-	0.1
Mercury	7439976	2.0	0.051	1.4	0.77
Methylmercury	22967926	-	0.3 mg/Kg	-	-
Methoxychlor	72435	100	-	-	0.03
Methylbromide	74839	47	1,500	-	-
Methylene Chloride	75092	4.6	590	-	-
Mirex	2385855	-	-	-	0.001
Nickel	7440020	610	4,600	e(0.8460 Hard*)+2.255) (In	e(0.8460 (In Hard*)+0.0584)
Nitrate (as N)	14797558	10,000	-	-	-
Nitrobenzene	98953	17	690	-	-
Nitrosamines, Other	N/A	0.0008	1.24	-	-
N-Nitrosodibutylamine	924163	0.0063	0.22	-	-
N-Nitrosodiethylamine	55185	0.0008	1.24	-	-
N-Nitrosodimethylamine	62759	0.00069	3.0	-	-
N-Nitrosodi-n-Propylamine	621647	0.0050	0.51	-	-
N-Nitrosodiphenylamine	86306	3.3	6.0	-	-
N-Nitrosopyrrolidine	930552	0.016	34	-	-
Nonylphenol	1044051	-	-	28	6.6
Parathion	56382	-	-	0.065	0.013
Pentachlorobenzene	608935	1.4	1.5	-	-
Pentachlorophenol	87865	0.27	3.0	e(1.005(pH)-4.869)	e(1.005(pH)-5.134)
Phenol	108952	21,000	<u>860,000</u> [1,700,000]	-	-
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064	-	0.0014
Pyrene	129000	830	4,000	-	-
Selenium	7782492	170	4,200	[20]	5.0
Silver	7440224	-	-	e(1.72 (In Hard*)-6.59)	-
Sulfate	N/A	250,000	-	-	-
Hydrogen Sulfide, Undissociated	7783064	-	-	-	2.0
Tetrachloroethylene	127184	0.69	3.3	-	-
Thallium	7440280	0.24	0.47	-	-
Toluene	108883	1300	15,000	-	-
Total Dissolved Solids	N/A	250,000	-	-	-
Toxaphene	8001352	0.00028	0.00028	0.73	0.0002
Tributyltin (TBT)	-	-	-	0.46	0.072
Trichloroethylene	79016	2.5	30	-	-
Vinyl Chloride	75014	0.025	2.4	-	-
Zinc	7440666	7,400	26,000	e(0.8473 (In Hard*)+0.884)	e(0.8473 (In Hard*)+0.884)
1,1-dichloroethylene	75354	330	7100	-	-
1,1,1-trichloroethane	71556	200	-	-	-
1,1,2-trichloroethane	79005	0.59	16	-	-
1,1,2,2-tetrachloroethane	79345	0.17	4.0	-	-
1,2-dichlorobenzene	95501	420	1300	-	-
1,2-dichloroethane	107062	0.38	37	-	-
1,2-dichloropropane	78875	0.50	15	-	-
1,2-diphenylhydrazine	122667	0.036	0.20	-	-
1,2-trans-dichloroethylene	156605	140	10,000	-	-
1,2,4-trichlorobenzene	120821	35	70	-	-
1,2,4,5-tetrachlorobenzene	95943	0.97	1.1	-	-
1,3-dichlorobenzene	541731	320	960	-	-
1,3-dichloropropene	542756	0.34	21	-	-

Table 1					
Pollutant	CAS ¹ Number	Water Quality Criteria mg[µg]/L ²			
		Human Health:		Warm Water Aquatic Habitat ³ :	
		DWS ⁴	Fish ⁵	Acute ⁶	Chronic ⁷
1,4-dichlorobenzene	106467	63	190	-	-
2-chloronaphthalene	91587	1,000	1,600	-	-
2-chlorophenol	95578	81	150	-	-
2-methyl-4,6-dinitrophenol	534521	13	280	-	-
2,3,7,8-TCDD (Dioxin)	1746016	5.0 E - 9	5.1 E - 9	-	-
2,4-D	94757	100	-	-	-
2,4-dichlorophenol	120832	77	290	-	-
2,4-dimethylphenol	105679	380	850	-	-
2,4-dinitrophenol	51285	69	5,300	-	-
2,4-dinitrotoluene	121142	0.11	3.4	-	-
2,4,5-TP (Silvex)	93721	10	-	-	-
2,4,5-trichlorophenol	95954	1,800	3,600	-	-
2,4,6-trichlorophenol	88062	1.4	2.4	-	-
3,3'-dichlorobenzidine	91941	0.021	0.028	-	-
4,4'-DDD	72548	0.00031	0.00031	-	-
4,4'-DDE	72559	0.00022	0.00022	-	-
4,4'-DDT	50293	0.00022	0.00022	1.1	0.001

¹CAS = Chemical Abstracts Service.

²Water quality criteria in mg[µg]/L unless reported in different units.

³Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

⁴DWS = Domestic Water Supply Source.

⁵Fish = Fish Consumption.

⁶Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.

⁷Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

⁸The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/l (thirty-five hundred mg/l) if aquatic life has not been shown to be adversely affected.

*Hard = Hardness as mg/l CaCO₃.

(2) The following additional criteria for radionuclides shall apply for Domestic Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/l;

(b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/l. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l;

(c) The concentration of total gross beta particle activity shall not exceed fifty (50) pCi/l;

(d) The concentration of tritium shall not exceed 20,000 pCi/l;

(e) The concentration of total Strontium-90 shall not exceed eight (8) pCi/l; or

(f) The concentration of uranium shall not exceed thirty (30) mg[µg]/l.

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year; and

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period; and

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated pursuant to[under] the Kentucky Wild Rivers Act, KRS 146.200-146.360;

2. Waters designated pursuant to[under] the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287;

3. ~~Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet; and~~

4. ~~Waters that support federally recognized endangered or threatened species pursuant to[under] the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.~~

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following criteria:

- a. Support a diverse or unique native aquatic flora or fauna;
- b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or
- c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026, shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/l as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/l.

(c)1. If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.

2. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species that the water supports.

(d) Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026.

(3) Determination of designation.

(a) A person may present a proposal to designate certain waters pursuant to this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026, Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine if the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except for those criteria in paragraphs (a) and (b) of this subsection.

(a) Dissolved oxygen. Instream concentrations shall average at least five and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/l shall be maintained.

(b) Maximum allowable instream concentrations for nitrite-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/l and shall be met at the edge of the assigned mixing zone.

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for

specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 1994.

(b) In addition, an applicant shall supply the documentation listed in 401 KAR 10:026, Section 3.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.

(5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers.

(1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f).

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet the effort the discharger made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3", EPA August 1994, Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(b) "Interim Economic Guidance for Water Quality Standards Workbook", EPA March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2012

FILED WITH LRC: August 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 5:00 p.m. (Eastern Time) at 300 Fair Oaks

Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: Peter Goodmann, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Peter.Goodmann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation describes the criteria applied in 401 KAR 10:026 to the surface waters of the Commonwealth. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(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 statutes by providing specific criteria and water quality standards for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes a citation to an outdated Executive Order; clarifies the cabinet's nutrient criteria; updates water quality criteria, specifically acrolein and phenol, to reflect scientific developments; and eliminate the Warm Water Aquatic Habitat acute criterion for Selenium. EPA has previously expressed concern regarding the methodology used by EPA to develop this criterion, mainly that the criterion represents a projection from the chronic criterion and is not based on empirical data. The elimination of the acute selenium criterion recognizes that on June 2, 2000 in accordance with a ruling by the U. S. Court of Appeals, EPA withdrew the acute criterion for selenium it had promulgated for the Great Lakes basin. Until the EPA promulgates new criteria that accounts for the latest science and complexity of the causative selenium species that result in acute toxicity, the cabinet is proposing to withdraw that criterion. This amendment also deletes a criterion for automatic inclusion for a designation of Outstanding State Resource Water; and clarifies that dissolved oxygen is an instream criterion. Other minor amendments are proposed to comply with regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to water quality criteria is necessary to revise criteria to protect human health and to meet federal recommendations. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review. The other amendments to the regulation simply clarify the cabinet's interpretation of this administrative regulation. Other minor amendments are proposed to comply with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing clear and up-to-date criteria and water quality standards for the protection of surface waters of the Commonwealth in accordance with the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to the surface waters of the Commonwealth. All individuals, businesses, organization, and governments that use the commonwealth's surface waters may be impacted by this regulation if they apply for a new or expanded discharge permit.

(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 revised water quality criteria will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established and less cost will be incurred where criteria have been lowered.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less costs may be incurred where criteria are less stringent than previously. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: There are no initial costs as a result of amending this administrative regulation

(b) On a continuing basis: There are no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund as appropriated by the Kentucky General Assembly and federal 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 in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Water quality standards and associated criteria vary based on the designated use of the surface water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

3. 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

(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.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement 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: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards. 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no

stricter standards or additional or different responsibilities or requirements.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270, 532.130 – 532.140

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270, 532.130, 532.135, 532.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. (1) After the warden receives the execution order, the warden shall:

(a) Read the execution order to the condemned person; and

(b) If the condemned person received his death sentence prior to March 31, 1998, ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1).

(2) For a warrant from the Governor, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case:

(a) The warrant shall be reviewed to determine whether it reflects that the condemned person has:

1. Been determined not to be an offender with a serious intellectual disability as defined in KRS 532.130(2); or

2. Procedurally defaulted or waived the determination of whether he is an offender with a serious intellectual disability.

(b) If the warrant does not reflect one (1) of the items indicated in paragraph (a) of this subsection, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.

(3) For a mandate from a court, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended. ~~Determine if the condemned person received his death sentence prior to March 31, 1998; and~~

(c) Ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1), if the condemned person received his death sentence prior to March 31, 1998].

(4)[(2)] For any designation required to be made in writing in this administrative regulation, if the condemned person cannot see, read, or write sufficiently to complete his designation, then a staff person at the penitentiary shall:

(a) Ask the condemned person to state his designation;

(b) Write the designation stated by the condemned person;

(c) Read the designation as written to the condemned person; and

(d) Ask the condemned person to sign or make his mark on the document.

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Section 2. Condemned Person's Designation of Witnesses. (1) The warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals who may witness the execution pursuant to KRS 431.250.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 3. Condemned Person's Designation Concerning Property, Funeral, and Disposition of Body. (1) The warden shall ask the condemned person to designate in writing the person who may:

(a) Collect the condemned person's personal property after his death;

(b) Take charge of the condemned person's body; and

(c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

(4) If the condemned person fails or refuses to designate a person to take charge of his body, burial shall be in accordance with KRS 431.270.

Section 4. Visitation Designation. (1) After an execution order has been issued, the warden shall ask the condemned person to designate in writing his minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 5. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property. Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property to the following:

(1) One mattress;

(2) Two sheets;

(3) One pillow;

(4) One pillow case;

(5) One pair of scrub-type pants;

(6) One scrub-type shirt;

(7) One pair of underwear;

(8) One pair of socks;

(9) One toothbrush;

(10) One tube of toothpaste;

(11) One bar of soap;

(12) One bath towel; and

(13) One wash cloth.

Section 6. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property for Females. (1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property for a female to the items in Section 5 of this administrative

regulation and the following:

(a) One bra;

(b) Sanitary napkins; and

(c) Tampons.

(2) The bra shall be white and if it contains stays or underwire, they shall be plastic.

(3) The supply of sanitary napkins and tampons shall be in a sufficient quantity to allow the individual to maintain an acceptable level of personal hygiene.

Section 7. Transfer of Female Condemned Person. If the condemned person is female, she shall be transferred to the penitentiary for execution. The date of the transfer shall be determined by the warden.

Section 8. Securing Condemned Person's Personal Property Prior to Execution. (1) The warden shall inventory and secure any personal property of the condemned person prior to the execution.

(2) The warden shall set the time for the removal of all personal property.

Section 9. Post-execution Steps. (1) The return on the judgment shall be made in accordance with KRS 431.260 within seven (7) days of the execution.

(2) If the condemned person does not make other arrangements, the department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.

(3) The penitentiary shall call the person designated by the condemned person to pick up his personal property within three (3) days of the execution. If the person cannot be reached by phone, notice may be mailed to the person.

LADONNA H. THOMPSON, Commissioner

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, 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 October 1, 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: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures to be carried out in preparation for an execution including the designation of witnesses, disposition of the condemned person's property, and preparation of the condemned for execution. It also establishes the procedures to be carried out after the execution including arrangements for delivery or burial of the body.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or

any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary to establish the Department's procedures before and after an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 196.035 and 197.020, establishes the procedures before and after an execution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to be performed by Corrections personnel before and after a legal execution.

(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 establishes a procedure for providing notice to certain condemned persons and counsel that the condemned person may not be subject to execution if determined to be an offender with a serious intellectual disability and establishes that a court order is necessary to suspend the execution. Other minor changes are made as well.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses issues in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides additional notice to the condemned person and counsel of potential issues for an offender with a serious intellectual disability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-four inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$22,000;

Kentucky State Police, \$2,200;

Kentucky Department of Fish and Wildlife, \$450;

Office of the Kentucky State Medical Examiner, \$2,000;

Lyon County Sheriff's Office, \$600;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Kentucky National Guard, \$18,975;

Lyon County Ambulance Service, \$750;

Commonwealth's Attorney for Lyon County, the state's 57 Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office. Kentucky Department of Public Advocacy, \$34,463.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties before and after an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$81,438.

(b) On a continuing basis: Each execution is estimated to cost approximately \$81,438.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the state agencies listed in 4(b) above, via the biennial budget. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, tax dollars designated to them by the county.

(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 impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(3) 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 promulgation of this administrative regulation will not generate any revenue for the entities listed in #1 above.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$22,000;
Kentucky State Police, \$2,200;
Kentucky Department of Fish and Wildlife, \$450;
Office of the Kentucky State Medical Examiner, \$2,000;
Lyon County Sheriff's Office, \$600;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Kentucky National Guard, \$18,975;
Lyon County Ambulance Service, \$750;
Commonwealth's Attorney for Lyon County, the state's 57 Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office. Kentucky Department of Public Advocacy, \$34,463.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-): None.
Expenditures (+/-): \$81,438.00
Other Explanation: None.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits and checks on the condemned person during each shift daily. The contacts and observations from these nurse visits and checks shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.

(c) A licensed psychologist shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday; and

2. Document his observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person.

(d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced practice registered nurse[practitioner] shall:

1. Complete a physical examination; and

2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.

(b) A psychiatric interview and evaluation shall be:

1. Completed;

2. Placed in the condemned person's medical record; and

3. Sent to the warden.

(3) The designated medical professional shall:

(a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and

(b) Document his observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons. (1) If the condemned person is female, a pregnancy test shall be administered.

(2) If the execution order is received at least fourteen (14) days prior to the scheduled date of execution, a pregnancy test shall be administered:

(a) Fourteen (14) days prior to the scheduled date of execu-

tion; and

(b) Seven (7) days prior to the scheduled date of execution.

(3) If the execution order is received less than fourteen (14) days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable. A physician shall determine if a second pregnancy test is feasible given the date the execution order is received and when the initial pregnancy test is taken.

(4) If a pregnancy test is positive, then:

(a) The department shall give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2). [Medical staff shall notify the warden of the positive test;

(b) The warden shall notify the commissioner of the positive test; and

(c) The commissioner shall notify the Governor's Office or court issuing the mandate.]

Section 3. Insanity Issues. (1) If the warden receives information from medical or mental health staff that the condemned person may be insane as defined in KRS 431.213(2), the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he shall determine if the information is:

(a) The opinion of the department psychiatrist; or

(b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional department psychiatric evaluation needs to be performed on the condemned person.

(3) The designated medical professional shall order a department psychiatric evaluation if he determines one is needed.

(4) The designated medical professional shall notify the warden and the commissioner if a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2)-(5). If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2), the department shall:

(a) Give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and

(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135. [The warden shall immediately notify the commissioner; and

(b) The commissioner shall notify the Governor's Office or court issuing the mandate.]

LADONNA H. THOMPSON, Commissioner

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, 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 October 1, 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: Amy V. Barker, Assistant General Coun-

sel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for medical and psychological examination and evaluation prior to execution.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary to establish Department procedures for examination and evaluation of the condemned person's medical and mental status prior to an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 196.035 and 197.020, establishes the procedures for examination and evaluation of the condemned person's medical and mental status prior to an execution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to assist Department of Corrections' personnel in examining and evaluating a condemned person prior to execution.

(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 suspends the execution if the condemned person is pregnant or appears to be insane.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses issues in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides additional safeguards for a condemned person who is pregnant or insane.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-four inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$22,000;
Kentucky State Police, \$2,200;
Kentucky Department of Fish and Wildlife, \$450;
Office of the Kentucky State Medical Examiner, \$2,000;
Lyon County Sheriff's Office, \$600;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Kentucky National Guard, \$18,975;
Lyon County Ambulance Service, \$750;
Commonwealth's Attorney for Lyon County, the state's 57 Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

Kentucky Department of Public Advocacy, \$34,463.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$81,438.

(b) On a continuing basis: Each execution is estimated to cost approximately \$81,438.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the state agencies listed in 4(b) above, via the biennial budget. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, tax dollars designated to them by the county.

(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 impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(3) 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 promulgation of this administrative regulation will not generate any revenue for the entities listed in #1 above.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$22,000;
Kentucky State Police, \$2,200;
Kentucky Department of Fish and Wildlife, \$450;
Office of the Kentucky State Medical Examiner, \$2,000;
Lyon County Sheriff's Office, \$600;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Kentucky National Guard, \$18,975;
Lyon County Ambulance Service, \$750;
Commonwealth's Attorney for Lyon County, the state's 57 Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

Kentucky Department of Public Advocacy, \$34,463.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to

the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-): None.

Expenditures (+/-): \$81,438.00

Other Explanation: None.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 16:330. Lethal injection protocols[protocol].

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocols[~~protocol~~] for execution by lethal injection.

Section 1. Procurement, Storage, and Accountability of Substances[Chemicals]. (1) Upon receipt of an execution order, the warden shall check the supply of substances[chemicals] and their expiration dates. If additional substances[chemicals] are needed, the warden shall place an order to obtain the necessary substances[chemicals] for the lethal injection protocols listed in Section 3 of this administrative regulation[an execution by lethal injection].

(2) ~~The substances shall be stored~~[The warden shall transport the chemicals from the point of procurement and place them] in a secured area of the penitentiary in locked containers. ~~[Pancuronium bromide shall be stored separately from the other chemicals in its own locked container, which shall be refrigerated at a temperature of at least forty (40) degrees Fahrenheit.]~~ The warden shall maintain control of the keys to the secured areas and containers[at all times. A duplicate set of keys shall not be made].

(3) A log shall be maintained in the storage containers which shall record:

- (a) New supplies of substances[chemicals] received and added to inventory;
- (b) Substances[Chemicals] removed for use;
- (c) Disposal of substances[chemicals] due to expiration; and
- (d) Any other reason that a substance[chemical] is removed or deducted from inventory.

Section 2. Preliminary Steps. (1) The condemned person shall be executed by using the One Drug Protocol in Section 3(2) of this administrative regulation. If the necessary substance or quantity of the substance for the One Drug Protocol is not in the warden's possession by seven (7) days prior to the execution, the condemned person shall be executed by using the Two Drug Protocol in Section 3(3) of this administrative regulation. The commissioner shall notify the condemned person at least seven (7) days prior to the execution of the protocol to be used.

(2)[(4)] The penitentiary shall have a minimum of two (2) phone lines available for communication with the courts and counsel on the day of execution. ~~The phones shall be checked to determine if they~~[warden shall determine if necessary phone lines] are operational prior to the execution.

(3)[(2)] If the condemned person is to be executed by lethal injection:

- (a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of execu-

tion; and

(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.

(4)[(3)] On the day of execution the warden shall provide to the IV team sufficient amounts of each substance[chemical] listed in Section 3 of this administrative regulation to prepare two (2) ~~complete sets of~~ syringes for the drug protocol selected to be used. One (1) syringe[set] shall serve as the primary syringe[set of syringes]. The other syringe[set of syringes] shall be a back-up [set].

(5)[(4)] At the execution building, each substance[chemical] shall be prepared in accordance with the manufacturer's instructions, if applicable, and drawn into the two (2) ~~sets of~~ syringes by one (1) member of the IV team designated by the warden. The other member of the IV team shall observe preparation of the substances[chemicals] and verify that the instructions and procedures have been carried out correctly.

(6)[(5)] Any syringes that are loaded with lethal injection substances[chemicals] that are not used during the execution shall be:

- (a) ~~Not be used;~~
- (b) ~~Be returned to the warden; and~~
- (c) ~~Be~~ destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(7)[(6)] Any unused substances[chemicals] that were not prepared for[mixed in preparation of] the lethal injection shall be:

- (a) Returned to the warden;
- (b) Locked in the storage container; and
- (c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(8)[(7)] A member of the IV team shall determine the appropriate size needle based on the examination of the condemned person's veins within the five (5) hours prior to the execution.

(9)[(8)] The warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(10)[(9)] The IV team shall run the IV lines to the condemned person by the following:

- (a) Site and insert one (1) primary IV line; and
- (b) Site and insert one (1) backup IV line.

(11)[(40)] The location of the IV sites on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

- (a) Arms;
- (b) Hands;
- (c) Ankles; or
- (d) Feet.

(12)[(44)] To best ensure that a needle is inserted properly into a vein, the IV team members shall look for the presence of blood in the valve of the sited needle.

(13)[(42)] If the IV team cannot secure two (2) IV sites within one (1) hour, the Commissioner shall contact the Governor's Office and request that the execution be scheduled for a later date.

(14)[(43)] If the IV team is able to establish the two IV lines, the team shall start a saline flow.

(15)[(44)] The execution team shall:

- (a) Securely connect the electrodes of the cardiac monitor to the condemned person; and
- (b) Ensure the equipment is functioning.

(16)[(45)] Counsel assigned by the cabinet and counsel assigned by the office of the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(17)[(46)] The viewing curtain shall be opened.

(18)[(47)] The warden shall announce the execution to the witnesses.

(19)[(48)] The warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.

(20)[(49)] The warden shall order the execution to proceed.

Section 3. Protocols and Sequence of Substances[Chemicals].
(1) The lethal injection protocols shall be as follows.

(2) One Drug Protocol.

(a) A designated execution team member shall inject via IV three (3) gm of Sodium Thiopental (60 ml of a 50mg/ml solution) or five (5) gm of Pentobarbital (100 ml of a 50 mg/ml solution) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of the Sodium Thiopental or Pentobarbital in the primary site and order that the backup IV be used with a new flow of the substance.

(c) A designated execution team member shall start a stop-watch once the lethal injection is complete.

(d) A designated execution team member shall:

1. Observe the heart monitor; and

2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(e) The viewing curtain shall be drawn before the:

1. Coroner enters the chamber to declare death; and

2. Physician enters the chamber to certify the cause of death.

(f) An additional injection of the substance listed in paragraph (a) of this subsection shall be used if the:

1. Heart monitor does not indicate a flat line after ten (10) minutes;

2. Coroner is not able to declare death; and

3. Physician is unable to certify the cause of death after the ten (10) minute period.

(g) The injections shall continue until death has occurred.

(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.

(3) Two Drug Protocol.

(a) A designated execution team member shall inject via IV 10 mg of midazolam (5mg/ml concentration) and 40 mg of hydromorphone (10 mg/ml concentration) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of midazolam and hydromorphone in the primary site and order that the backup IV be used with a new flow of the substances listed for this protocol in paragraph (a) of this subsection.

(c) A designated execution team member shall start a stop-watch once the lethal injection is complete.

(d) A designated execution team member shall:

1. Observe the heart monitor; and

2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(e) The viewing curtain shall be drawn before the:

1. Coroner enters the chamber to declare death; and

2. Physician enters the chamber to certify the cause of death.

(f) An additional injection of the lethal substances listed in paragraph (a) of this subsection shall be used if the:

1. Heart monitor does not indicate a flat line after ten (10) minutes;

2. Coroner is not able to declare death; and

3. Physician is unable to certify the cause of death after the ten (10) minute period.

(g) Any additional injections after the initial and second injections shall be 60 mg of hydromorphone (10 mg/ml concentration). The injections shall continue until death has occurred.

(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV. [At the warden's order to proceed, a designated execution team member shall begin a rapid flow of lethal chemicals in the following sequence:

(a) Three (3) gm of Sodium Thiopental;

(b) Twenty-five (25) milligrams of Saline;

(c) Fifty (50) milligrams of Pancuronium Bromide;

(d) Twenty-five (25) milligrams of Saline;

(e) 240 milliequivalents of Potassium Chloride; and

(f) Twenty-five (25) milligrams of Saline.

(2) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of Sodium Thiopental in the primary site and order that the backup IV be used with a new flow of Sodium Thiopental and the other chemicals listed in subsection (1) of this section.

(3) If it appears to the warden based on his visual inspection that the condemned person is unconscious after the injection of Sodium Thiopental, the warden shall order the designated team member to continue the injections of the other chemicals listed in subsection (1) of this section through the primary IV.

(4) A designated execution team member shall start a stop-watch once the lethal injections are complete.

(5) A designated execution team member shall:

(a) Observe the heart monitor; and

(b) Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(6) The viewing curtain shall be drawn before the:

(a) Coroner enters the chamber to declare death; and

(b) Physician enters the chamber to certify the cause of death.

(7) The warden shall order an additional set of lethal chemicals to be administered if the:

(a) Heart monitor does not indicate a flat line after ten (10) minutes;

(b) Coroner is not able to declare death; and

(c) Physician unable to certify the cause of death during the ten (10) minute period.

(8) The process established in subsection (1) of this section shall continue until death has occurred.

(9) During the execution by lethal injection the warden and deputy warden shall watch the primary iv site for failure, leakage, the catheter coming out of a vein, or any other problem. In the event that an IV fails, leaks, if the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.]

Section 4. Post Lethal Injection Steps. (1) If the Coroner declares death, the warden shall [be informed.

(2) The warden shall] announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2) [(3)] The witnesses shall be escorted out of the witness room.

Section 5. Stabilization Procedure. (1) Before an execution commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) If any of the substances [chemicals] have been injected [administered], the medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel

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listed in Section 5(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall notify the Governor's Office or court issuing the mandate.

LADONNA H. THOMPSON

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, 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 October 1, 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: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocols for conducting an execution by lethal injection.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes lethal injection as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by lethal injection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the lethal injection process, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a clear procedure for execution by lethal injection in this 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: The amendment revises the protocols for execution by lethal injection and expands the protocols to include more than one method of lethal injection.

(b) The necessity of the amendment to this administrative regulation: This amendment address issues in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration

of the statutes: The amendment revises the protocols for execution by lethal injection and expands the protocols to include more than one method of lethal injection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$22,000;

Kentucky State Police, \$2,200;

Kentucky Department of Fish and Wildlife, \$450;

Office of the Kentucky State Medical Examiner, \$2,000;

Lyon County Sheriff's Office, \$600;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Kentucky National Guard, \$18,975;

Lyon County Ambulance Service, \$750;

Commonwealth's Attorney for Lyon County, the state's 57 Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office. Kentucky Department of Public Advocacy, \$34,463.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately \$81,438.

(b) On a continuing basis: Each execution is estimated to cost approximately \$81,438.

(6) What is the source of funding to be used for the implemen-

tation and enforcement of this administrative regulation: Tax dollars designated to the state agencies listed in 4(b) above, via the biennial budget. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, tax dollars designated to them by the county.

(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 impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(3) 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 promulgation of this administrative regulation will not generate any revenue for the entities listed in #1 above.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$22,000;
Kentucky State Police, \$2,200;
Kentucky Department of Fish and Wildlife, \$450;
Office of the Kentucky State Medical Examiner, \$2,000;
Lyon County Sheriff's Office, \$600;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Kentucky National Guard, \$18,975;
Lyon County Ambulance Service, \$750;
Commonwealth's Attorney for Lyon County, the state's 57 Com-

monwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

Kentucky Department of Public Advocacy, \$34,463.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-): None.

Expenditures (+/-): \$81,438.00

Other Explanation: None.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amendment)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are established in the Kentucky core academic standards, 704 KAR 3:303. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. ~~[Until the graduating class of 2012, each student in a common school shall complete an individual learning plan which incorporates emphasis on career development and shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the following minimum requirements:~~

~~(1) Language arts: Four (4) credits (including English I, II, III, and IV);~~

~~(2) Social studies: three (3) credits (to incorporate U.S. History, Economic, Government, World Geography, and World Civilization);~~

~~(3) Mathematics: three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the Kentucky core academic standards, 704 KAR 3:303);~~

~~(4) Science: three (3) credits (including life science, physical science, and earth and space science as provided in the Kentucky core academic standards, 704 KAR 3:303);~~

~~(5) Health: one-half (1/2) credit;~~

~~(6) Physical education: one-half (1/2) credit;~~

~~(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content): one (1) credit; and~~

~~(8) Electives: seven (7) credits.]~~

Section 2. ~~Beginning with the graduating class of 2012,] Each~~

student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards, 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

(1) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English and language arts.

(a) Language arts shall be taken each year of high school.

(b) If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies;

(3) Mathematics - four (4) courses of mathematics, including three (3) credits that shall include the content contained in the Kentucky core academic standards for mathematics and include the following minimum requirements:

(a) Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards, 704 KAR 3:303;

(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce; and

(c) If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school; and

(d) Prealgebra shall not be counted as one (1) of the three (3) required mathematics credits for high school graduation but may be counted as an elective;

(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for science[health];

(5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health;

(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education;

(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities or a standards-based specialized arts course based on the student's individual learning plan;

(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(9) Demonstrated performance-based competency in technology.

Section 2[3]. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to

allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 3[4]. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent shall receive information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 4[5]. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards, 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one subject; or

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award standards-based performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7 or 8 if:

(a) The content of the course is the same that is established in the Kentucky core academic standards, 704 KAR 3:303; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A board of education which has chosen to award standards-based performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3:303, Kentucky core academic standards, and 703 KAR 4:060, Academic expectations;

(e) The extent to which state-provided assessments will be

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used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 1[or 2] of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school and the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

Section 5[6]. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 6[7]. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal or teacher from awarding special recognition to a student.

Section 7. Beginning with the graduating class of 2013, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 1 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. (1) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Kentucky core academic standards, and shall be reviewed at least annually.

(2) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(3) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.[8. (1) Until the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study leading to receipt of a diploma, an alternative program shall be offered.

(a) This program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually.

(b) A student who completes this course of study shall be recognized for achievement.

(c) This may be accomplished by the local board of education awarding a certificate.]

(2) Beginning with the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be of-

fered.

(a) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Kentucky core academic standards, and shall be reviewed at least annually.

(b) A student who completes this course of study shall receive a certificate of attainment to be awarded by the local board of education consistent with the graduation practices for all students.]

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

TERRY HOLLIDAY, Ph.D.

DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum high school graduation requirements for students in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation was amended to comply with the mandate of SB 43 (2012) to award an alternative high school diploma rather than a certificate of attainment to a student with a disability who has completed a modified curriculum and an individualized course of study.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation amendment carries out the requirements of SB 43 (2012).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation amendment carries out the requirements of SB 43 (2012).

(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 award an alternative high school diploma rather than a certificate of attainment to a student with a disability who has completed a modified curriculum and individualized course of study as required in SB 43 (2012).

(b) The necessity of the amendment to this administrative regulation: Amendment required by SB 43 (2012).

(c) How the amendment conforms to the content of the authorizing statute: Amendment changes "certificate of attainment" to "alternative diploma" per SB 43 (2012).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation was amended to comply with the mandate of SB 43 (2012) to award an alternative high school diploma rather than a certificate of attainment to a

student with a disability who has completed a modified curriculum and an individualized course of study.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The school districts will be impacted by the regulation's requirement that alternative diplomas replace certificates of attainment. The regulation also provides the opportunity to award alternative high school diplomas to those students who have previously earned certificates of attainment.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will now be required to award alternative diplomas instead of certificates of attainment to those students who so qualify.

(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 minimal printing costs associated with the conversion to alternative diplomas.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with SB 43 (2012).

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

(a) Initially: Minimal costs.

(b) On a continuing basis: Minimal printing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Local school district general funds and any applicable federal funds.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.060, 156.070 and KRS 156.160 as amended by SB 43 (2012).

(3) 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 cause districts to incur minimal printing costs.

(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? Minimal printing costs.

(d) How much will it cost to administer this program for subsequent years? Minimal printing costs.

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

Revenues (+/-): None

Expenditures (+/-): Minimal printing costs

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Division of Kentucky Access (Amendment)

806 KAR 17:540. ICARE Program high-cost conditions.

RELATES TO: 2012 Ky. Acts ch. 144, Part XII, secs. 1-8, 12 [2010 ES Acts ch. 1, Part XII, secs. 1-8, 12]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2012 Ky. Acts ch. 144, Part XII, sec. 2(3)(b) [2010 ES Acts ch. 1, Part XII, sec. 2(3)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2012 Ky. Acts ch. 144, Part XII, sec. 2(3)(b) [2010 ES Ky Acts ch. 1, Part XII, sec. 2(3)(b)] requires the department to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions representing the top twenty (20) high-cost conditions in the small group market.

Section 1. Definitions. (1) "Eligible employee" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(3) [2010 ES Ky Acts ch. 1, Part XII, sec. 1(3)].

(2) "High-cost condition" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(5) [2010 ES Ky Acts ch. 1, Part XII, sec. 1(5)].

(3) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2012 Ky. Acts ch. 144, Part XII, sec. 2(1) [2010 ES Ky Acts ch. 1, Part XII, sec. 2(1)].

Section 2. List of High-Cost Conditions. An ICARE Program high-cost condition shall:

(1) Be diagnosed or treated by a health care provider legally authorized to diagnose the condition within the past five (5) years and documented in the medical record of an eligible employee; and

(2) Include one (1) of the following medical conditions:

(a) Anoxic brain injury, which shall be limited to anoxic brain injury associated with:

1. Drowning and nonfatal submersion; or
2. Intrauterine hypoxia and birth asphyxia;

(b) Ascites;

(c) Back disorder, which shall be limited to:

1. Lumbar or Lumbosacral disc degeneration; or
2. Lumbar disc displacement;

(d) Brain tumor;

(e) Burn, which shall be limited to full-thickness skin loss involving ten (10) percent or more of body surface;

(f) Cancer, which shall be limited to:

1. Ewing's sarcoma;
2. Hodgkin's disease;
3. Leukemia;
4. Lymphoid leukemia;
5. Malignant neoplasm of breast;
6. Metastatic cancer;
7. Myeloid leukemia; or
8. Primary cancer;

(g) Cirrhosis of the liver;

(h) Endocrine disorder, which shall be limited to:

1. Insulin dependent diabetes mellitus; or
2. Enzyme deficiency disorder which shall be limited to inborn errors of metabolism;

(i) Heart condition, which shall be limited to:

1. Acute myocardial infarction;
2. Angina pectoris;
3. Cardiac valve disorder;
4. Cardiomyopathy;
5. Congenital cardiac anomaly;
6. Coronary insufficiency;
7. Coronary occlusion;
8. Heart failure;
9. Injury to heart or lung;

10. Ischemic heart disease;
11. Pulmonary atresia;
12. Pulmonary hypertension; or
13. Status post open-heart surgery;
- (j) Hemophilia;
- (k) Hypersomnia with sleep apnea;
- (l) Lung condition, which shall be limited to:
 1. Chronic airway obstruction;
 2. Disease of the lung; or
 3. Post inflammatory pulmonary fibrosis;
- (m) Kidney condition, which shall be limited to:
 1. Chronic renal failure;
 2. End stage renal disease; or
 3. Polycystic kidney;
- (n) Morbid obesity;
- (o) Multiple sclerosis;
- (p) Organ or tissue replaced by transplant;
- (q) Psychotic disorder;
- (r) Rhabdomyolysis;
- (s) Stroke; or
- (t) Trauma, which shall be limited to:
 1. Fracture or complete lesion of cord; or
 2. Multiple trauma.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2012

FILED WITH LRC: August 14, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of high-cost medical conditions for the ICARE Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a list of 20 high-cost conditions that will be used to qualify an eligible small business employer for an ICARE Program health care incentive payment if the employer has an eligible employee who has been diagnosed with or treated for 1 of the high-cost conditions within 5 years.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 265, Section XII of the 2012 Regular Session continues the ICARE Program as a pilot program for the next two fiscal years for those who were approved for participation as of June 15, 2010 and requires the Department to establish a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based on information received from

ICARE participating insurers offering health benefit plans in the small group market.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the list of ICARE Program high-cost conditions.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update statutory references.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate authority for the ICARE Program, which was re-established in HB 265, Part XII, during the 2012 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 265, Section XII of the 2012 Regular Session continues the ICARE Program as a pilot program for the next two fiscal years for those who were approved for participation as of June 15, 2010 and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

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

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

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to participants in the ICARE Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2012 Reg. Sess. Ky. Acts ch. 144, Part XII, secs. 1-8, 12

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(Amendment)**

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2012 Ky. Acts ch. 144, Part XII, secs. 1-8, 12[2010 ES Acts ch. 1, Part XII, secs. 1-8, 12], KRS 304.1-050(2), 304.2-310, 304.9-020(1), 304.17A-005(22)

STATUTORY AUTHORITY: KRS 304.2-110(1), 2012 Ky. Acts ch. 144, Part XII, secs. 1(2), 1(3), 2(5)[2010 ES Acts ch. 1, Part XII, secs. 1(2), 1(3), 2(5)].

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2012 Ky. Acts ch. 144, Part XII, sec. 1(2) and (3)[2010 ES Ky Acts ch. 1, Part XII, sec. 1(2) and (3)] require the department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2012 Ky. Acts ch. 144, Part XII, sec. 2(5)[2010 ES Ky Acts ch. 1, Part XII, sec. 2(5)] requires the department to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program renewal application" means the ICARE Program renewal application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300 percent of the federal poverty level or below, which may include the employer's:

1. Quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan if:

1. The employer group is participating in the ICARE Program as a previously uninsured group; or

2. The employer group is participating in the ICARE Program under the high cost condition category and the employer group has changed coverage during the ICARE Program year;

(c) Employee ICARE Program high-cost condition certification, if applicable; and

(d) Any additional attachments, if applicable.

(3) "Department" is defined in KRS 304.1-050(2).

(4) "Eligible employee" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(3)[2010 ES Ky Acts ch. 1, Part XII, Sec. 1(3)].

(5) "Eligible employer" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(2)[2010 ES Ky Acts ch. 1, Part XII, Sec. 1(2)].

(6) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9) "Health benefit plan" is defined in KRS 304.17A-005(22).

(10) "Health care incentive payment" means a payment as established in 2012 Ky. Acts ch. 144, Part XII, secs. 2(3) and 4(1)[2010 ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1)].

(11) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2012 Ky. Acts ch. 144, Part XII, sec. 2(1)[2010 ES Ky Acts ch. 1, Part XII, sec. 2(1)].

(12) "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(5)[2010 ES Ky Acts ch. 1, Part XII, sec. 1(5)]; and

(b) Established in 806 KAR 17:540.

(13) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14) "ICARE Program participating insurer" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(6)[2010 ES Ky Acts ch. 1, Part XII, sec. 1(6)].

(15) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16) "Insurer" is defined in KRS 304.17A-005(27).

(17) "Qualified health benefit plan" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(8)[2010 ES Ky Acts ch. 1, Part XII, sec. 1(8)].

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2012 Ky. Acts ch. 144, Part XII, sec. 1(2)[2010 Ky Acts ch. 127, Part XII, sec. 1(2)], the department shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300 percent of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2012 Ky. Acts ch. 144, Part XII, sec. 2(4)[2010 ES Ky Acts ch. 1, Part XII, sec. 2(4)], the department shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;
3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

Section 3. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department within thirty (30) days of the date of the change.

Section 4. Renewal of ICARE Program Participation.

(1) At least sixty (60) days prior to the ICARE Program year renewal date, the department shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department:

(a) A written request for renewal of ICARE Program participation;

(b) A complete ICARE Program renewal application; and

(c) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8[2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8].

(3) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of a renewal application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program renewal application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

(4) Within thirty (30) days of receiving a request for renewal, the department shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 5. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8[2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8];

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2012 Ky. Acts ch. 144, Part XII, sec. 4(5)[2010 ES Ky Acts ch. 1, Part XII, sec. 4(5)];

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 8 of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 6. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 of this administrative regulation or termination by the department pursuant to Section 5 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing. A request for reconsideration shall include:

(a) A description of the basis for reconsideration; and

(b) Any new relevant information including documentation to support eligibility as established in Section 2 of this administrative regulation and 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8[2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8] that was not provided with the written request for renewal.

(2) The department shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 7. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2012 Ky. Acts ch. 144, Part XII, sec. 4(1)[2010 ES Ky Acts ch. 1, Part XII, sec. 4(1)] for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department all health care incentive payments received by the employer for the period of ineligibility determined by the department.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2012 Ky. Acts ch. 144, Part XII, sec. 4(1)[2010 ES Ky Acts ch. 1, Part XII, Sec. 4(1)].

Section 8. Annual Review. The department may make or

cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8[2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8]; 806 KAR 17:540 and 17:555; and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 9. Response to Department Inquiry. If an employer receives an inquiry from the department relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 10. Incorporation by Reference. (1) "ICARE-APP-1", 6/2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2012

FILED WITH LRC: August 14, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and the eligibility criteria for employers wishing to participate in the ICARE Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 265, Section XII, enacted during the 2012 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 265, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for employers whose applications were approved as of June 15, 2010, and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by further establishing eligibility requirements, the ICARE Program application, application and appeal processes, annual review and payment of health care incentives.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update statutory references and remove the requirements related to new applicants.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was continued in HB 265, Part XII, during the 2012 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 265, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for employers who had an application approved by June 15, 2010. HB 265 further requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the existing ICARE members or the health insurance agents assisting in the renewal process

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: ICARE participating employers will continue to comply with the requirements of this administrative regulation to ensure renewal in the program and the continued receipt of health care incentive payments. Employers will be required to provide a written request for renewal, a renewal application, and supporting documentation in order to maintain eligibility in the ICARE Program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, participating employers will continue to receive the health care incentive payments afforded under the program.

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

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

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

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administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to ICARE Program participants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2012 Ky. Acts ch. 144, Part XII, secs. 1-8, 12

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Division of Kentucky Access (Amendment)

806 KAR 17:555. ICARE Program requirements.

RELATES TO: KRS 304.1-050(2), 304.14-120, 304.14-430-304.14-450, 304.17A-095 -304.17A-0954, 2012 Ky Acts ch. 144, Part XII, sec. 1-8[2010-ES Ky Acts ch. 1, Part XII, sec. 4-8], 42 U.S.C. 1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2012 Ky Acts ch. 144, Part XII, secs. 2(5) and 8(2)[2010-ES Ky Acts ch. 1, Part XII, secs. 2(5) and 8(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2012 Ky Acts ch. 144, Part XII, sec. 2(5)[2010-ES Ky Acts ch. 1, Part XII, sec. 2(5)] requires the department to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2012 Ky Acts ch. 144, Part XII, sec. 8[2010-ES Ky Acts ch. 1, Part XII, sec. 8] requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(3) "Consumer-driven health plan" is defined in 2012 Ky Acts ch. 144, Part XII sec. 1(1)[2008 Ky Acts ch. 127, Part XII, sec. 1(1)].

(4) "Department" is defined by KRS 304.1-050(2).

(5) "Eligible employee" is defined by 2012 Ky Acts ch. 144, Part XII sec. 1(3)[2010-ES Ky Acts ch. 1, Part XII, sec. 1(3)].

(6) "Eligible employer" is defined by 2012 Ky Acts ch. 144, Part XII sec. 1(2)[2010-ES Ky Acts ch. 1, Part XII, sec. 1(2)].

(7) "Health benefit plan" is defined by KRS 304.17A-005(22).

(8) "Health care incentive payment" means a payment as established in 2012 Ky Acts ch. 144, Part XII, secs. 2(3) and 4(1)[2010-ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1)].

(9) "Health risk assessment" is defined by 2012 Ky Acts ch. 144, Part XII, sec. 1(4)[2010-ES Ky Acts ch. 1, Part XII, sec. 1(4)].

(10) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2012 Ky Acts ch. 144, Part XII, sec. 2(1)[2010-ES Ky Acts ch. 1, Part XII, sec. 2(1)].

(11) "ICARE Program participating insurer" is defined by 2012 Ky Acts ch. 144, Part XII, sec. 1(6)[2010-ES Ky Acts ch. 1, Part XII, sec. 1(6)].

(12) "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.

(13) "Qualified health benefit plan" is defined in 2012 Ky Acts ch. 144, Part XII, sec. 1(8)[2010-ES Ky Acts ch. 1, Part XII, sec. 1(8)].

(14) "Small group" is defined by KRS 304.17A-005(42).

Section 2. Health Risk Assessment. An ICARE Program participating insurer shall:

(1) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the department, conduct a health risk assessment as established in 2012 Ky Acts ch. 144, Part XII, sec. 3(4)[2010-ES Ky Acts ch. 1, Part XII, sec. 3(4)] for each eligible employee of the employer; and

(2) Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section, and pursuant to 2012 Ky Acts ch. 144, Part XII, sec. 3(4)[2010-ES Ky Acts ch. 1, Part XII, sec. 3(4)], offer the following:

(a) A wellness program;

(b) Case management services; and

(c) Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the department for use in the small group or employer-organized association market shall be deemed qualified health benefit plans.

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2012 Ky Acts ch. 144, Part XII, secs. 3(2) and (4)[2010-ES Ky Acts ch. 1, Part XII, sec. 3(2) and (4)], the insurer shall submit for approval by the department, a:

(a) Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 through 304.14-450, and 806 KAR 14:007; and

(b) Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954, and 806 KAR 17:150, as applicable.

Section 4. Requirements of Disclosure. Pursuant to 2012 Ky Acts ch. 144, Part XII, sec. 8(1)[2010-ES Ky Acts ch. 1, Part XII, sec. 8(1)], a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format;

(2) Include information relating to availability of the:

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance pre-

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miums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP Program, 275 East Main Street, Frankfort, Kentucky 40621."; and

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;
 2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2012 Ky Acts ch. 144, Part XII, sec. 4(1)[2010 ES Ky Acts ch. 1, Part XII, sec. 4(1)];
 3. Limited enrollment of eligible employers under the ICARE Program; and
 4. Department Web site and toll-free telephone number of the ICARE Program; and
- (3) Be submitted annually to the department for review.

Section 5. ICARE Program Data Reporting Requirements.

(1)(a) An ICARE Program participating insurer shall designate a contact person to respond to inquiries of the department relating to the ICARE Program and provide to the department the contact person's:

1. Name;
2. Telephone and fax numbers; and
3. Electronic mail address; and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the department within fifteen (15) days of the date of the change.

(2) No later than the 15th day of each month, the department shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

- (a) The ICARE Program identification number;
- (b) Name of employer group; and
- (c) The ICARE Program year effective date.

(3) Each ICARE Program participating insurer shall collect the following information monthly for each ICARE Program participating employer:

- (a) The ICARE Program identification number;
- (b) Name of employer group;
- (c) Name of the qualified health benefit plan covering eligible employees;
- (d) Month of coverage;
- (e) Average monthly premium of each eligible employee;
- (f) Number of eligible employees covered under the qualified health benefit plan; and
- (g) Termination date, if applicable.

(4) No later than the 20th day of each month, an ICARE Program participating insurer shall report to the department information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the department, a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

- (a) Include for each ICARE Program participating employer:
 1. ICARE Program identification number;
 2. Name of the employer group; and
 3. Average annual premium paid; and
- (b) Be submitted in a format as established in the form, ICARE Report-1:

1. No later than February 1, for the previous calendar year; and
2. In an electronic or written format.

Section 6. Annual Department Review of ICARE Books and Records. The department[office] may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2012 Ky Acts ch. 144, Part XII, secs. 1 through 8[2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8]; 806 KAR 17:540; 806 KAR 17:545; and this administrative regulation; and

(2) The representations made by the employer on its applica-

tion for participation in the ICARE Program.

Section 7. Incorporation by Reference. (1) "ICARE Report-1", 7/2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2012

FILED WITH LRC: August 14, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the ICARE Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program and ICARE Program, data reporting, and annual review by the Department of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports and the annual review by the Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII of the 2010 1st Extraordinary Session continues the ICARE Program as a pilot program for the next two fiscal years for those participating in the program as of June 15, 2010 and requires the Department to establish guidelines for determination of preference for employer groups based upon federal poverty levels, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining terms and establishing standards for the manner and content of a disclosure of the availability of the HIPP program. Additionally, this administrative regulation establishes the require-

ments for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation corrects statutory references as a result of legislation enacted during the 2012 Regular Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 265, Part XII, during the 2012 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 265, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for those who were approved for participation in the program as of June 15, 2010 and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

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

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

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to insurers participating in the ICARE Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2012 Ky. Acts ch. 144, Part XII, secs. 1-8, 12

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendments to this administrative regulation will not have a fiscal impact. They are technical amendments to reference the legislative authority for the continuation of the ICARE Program.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

815 KAR 4:030. Elevator contractor licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4011, 198B.4009, 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed, and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540. This administrative regulation establishes the licensure requirements for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(2) Company license. A licensee who is an employee of a company and whose license represents the company shall notify

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the department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee established in Section 5(5)[6(5)] of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall submit to the department:

1. A completed, signed, and notarized Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license.

a. The initial license fee may be prorated.

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

3.~~[Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation; 4.]~~ A recent passport-sized color photograph of the applicant; and

4.~~[5.]~~ Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.~~[Section 4. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section.~~

~~(1) Minimum experience. An applicant shall have the experience required by KRS 198B.4015.~~

~~(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.~~

~~(a) Proof of listed experience shall be provided by W-2s.~~

~~(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.]~~

Section 4.[5.] Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed, signed and notarized Elevator License Renewal Application on Form EV-7~~[renewal application];~~

(b) A renewal fee of \$240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) ~~[Except for a license placed in inactive status in accordance with subsection (5) of this section,] Each application for license~~

renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) A renewal application filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 5(1)[6(1)] of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 5(2)[6(2)] of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.

(b) An inactive elevator contractor shall not:

~~(1) Secure an elevator permit;[;]~~

~~(2) Advertise;[;]~~ or

~~(3) Represent himself as an[a-qualified] elevator contractor currently authorized to contract elevator work in the common-wealth. [(c) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional \$120, and comply with the continuing education requirements established in 815 KAR 4:050.]~~

(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(7) Continuing education requirements shall not be required for renewal, provided the initial license was issued within twelve (12) months of renewal

(8) The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements; or

(c) Provide the current insurance certificates required by KRS 198B.4027.

(d) File renewal application as required by Section 4 of this administrative regulation.

(9) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional \$120, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 5.[6.] Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be \$100.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be \$120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee.

(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.

(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 6.[7.] Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

Section 7.[8.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Contractor License Application", Form EV-3, Oc-

tober 2011; and[.]

(b) "Elevator License Renewal Application" Form EV-7, August 2012[is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 10, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 10:00 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements and fees for elevator contractors.

(b) The necessity of this administrative regulation: This amendment is necessary to administer the elevator licensure program including renewals of licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator contractor license and renewals.

(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 the requirements and form to be used for renewals of elevator contractors' licenses in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: To provide a standardized renewal form and procedures for renewals of elevator contractors' licenses in the Commonwealth in accordance with statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4023 provides that a licensee shall renew his/her contractor's license annually on or before the final day of the licensee's birth month.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides standardized form for renewal, as well as establishes the procedures and require-

ments for successful elevator contractors' license renewals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator contractors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department, Division and Section is charged with implementation of the elevator licensure program, to ensure compliance with licensure requirements (including annual renewals) and carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and offset the expenditures to the Department, Division and Section. These fees were previously enacted and have not been amended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: As renewal rates mirror initial application fees, the agency anticipates no significant changes in revenues from the initial year which totaled \$8,160 for FY11-12.

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain relatively consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees (restricted funds) have been established and are sufficient to offset expenditures for this program. The agency has no anticipated need for an increase in fees or funding to continue the administration of this program through this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation established fees for program in 2011. There are no new fees established nor increases in existing fees as a result of this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators contractors are treated equally under the provisions of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, and Elevator section will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.4009, 198B.4011, 198B.4023, and 198B.4025.

(3) 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 establishes revenues for elevator contractor licensing which are estimated to offset expenditures for imple-

menting and enforcement of the contractor licensing program. These fees were established at the onset of the elevator licensure program and went into effect following legislative review November 30, 2011.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? As the fees are to remain constant, revenues are anticipated to remain consistent with the initial year's revenues which totaled \$8,160 for FY11-12.

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? The cost of administering the elevator contractor licensure program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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

Revenues (+/-): Increase due to new program implementation.

Expenditures (+/-): Increase to administer and enforce new licensure program.

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(Amendment)

815 KAR 4:040 Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS 198B.4013, 198B.4009, 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education[educations] requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics and establishes procedures for license renewal.

Section 1. Initial Application Requirements. (1) Filing the application. An applicant seeking an elevator mechanic license shall submit to the department:

(a) A completed, signed, and notarized Elevator Mechanic License Application on Form EV-4;

(b) An initial license application fee of ninety-six (96) dollars for a twelve (12) month license.

1. The initial license fee may be prorated.

2. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

(c) Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

(d) A recent passport-sized, color photograph of the applicant.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. If an applicant applies for licensure under the provisions of KRS 198B.4013(2)(a), the applicant shall take and pass the examination administered in compliance with this section. (1) The examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators and elevator systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(3) Except as provided by subsection (7) of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee.

(4)(a) A request to sit for the examination shall be made directly to the department-approved testing facility.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the examination application.

(5) The cost shall not exceed \$100 for the Kentucky Elevator Mechanic Examination.

(6) A passing score on the examination shall be valid for a period of two (2) years.

(7) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee[board] if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department finds[board has] reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Each license shall be renewed each year. To renew a license, an elevator mechanic shall submit to the department:

(a) A completed, signed, and notarized Elevator License Renewal Application on Form EV-7[renewal application];

(b) A renewal fee of ninety-six (96) dollars made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing education provider evaluation forms for each continuing education class attended.

(2) ~~Each~~[Except for a license placed in inactive status in accordance with subsection (6) of this section, an] application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee each year to be returned with the required fee.

(4) A renewal application filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew by sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section 5(2) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic renewal.

(a) To place the elevator mechanic's license in inactive status, an elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic shall not perform work within the Commonwealth if the work requires a mechanic's license. ~~[(c) To reactivate an elevator mechanic license, the inactive elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.]~~

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(9) The application for renewal or reactivation of a licensed elevator mechanic shall be denied for incompleteness if the application fails to:

(a) Pay the fees required for renewal and restoration, if applicable; ~~or~~

(b) Comply with elevator mechanic continuing education requirements; or

(c) File the renewal application as required by Section 4 of this administrative regulation.

(10) Reactivation of Inactive Elevator Mechanic's License. To reactivate an elevator mechanic license, the inactive elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 5. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 6. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the commissioner~~[board]~~ for any of the reasons stated in KRS 198B.4033.

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

(a) "Elevator Mechanic License Application", Form EV-4, September, 2011; and

(b) "Elevator License Renewal Application", Form EV-7, August 2012 ~~[is herein incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 10, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 10:00 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A

transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements and fees for elevator mechanics.

(b) The necessity of this administrative regulation: This amendment is necessary to implement the elevator licensure program including renewals of licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4009 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540 governing the safety and inspection of elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures, fees and requirements for application and maintenance of an elevator mechanic license and renewals.

(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 the requirements and form to be used for renewals of elevator mechanics' licenses in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: To provide a standardized renewal form and procedures for renewals of elevator mechanics' licenses in the Commonwealth in accordance with statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4023 provides that a licensee shall renew his/her mechanics license annually on or before the final day of the licensee's birth month.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides standardized form for renewal, as well as establishes the procedures and requirements for successful elevator mechanics' license renewals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator mechanics.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department, Division and Section will implement the elevator licensure program and ensure compliance with licensure requirements (including annual renewals) while carrying out inspection duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees established approximate and are anticipated to offset the expenditures to the Department, Division and Section for ensuring compliance with licensure laws. These fees were previously enacted and have not been amended.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): By implementing the elevator licensure program, citizens in the state will be assured that those performing elevator work have met experience standards and requirements necessary for licensure. As a result, elevator safety within the Commonwealth will be heightened.

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

(a) Initially: As renewal rates mirror initial application fees, the agency anticipates no significant changes in revenues from the initial year (\$43,200).

(b) On a continuing basis: The agency anticipates that this program's revenues and expenditures will remain consistent annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees established (restricted funds) have been established and are sufficient to offset expenditures for this program. The agency has no anticipated need for an increase in fees or funding to continue the administration of this program through this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation established fees for program in 2011. There are no new fees established nor increases in existing fees as a result of this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators mechanics are treated equally under the provisions of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, and Elevator Section will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.4009, 198B.4013 and 198B. 4023.

(3) 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 establishes revenues for elevator mechanic licensing which are estimated to offset expenditures for implementing and enforcement of the mechanics' licensing program. These fees were established at the onset of the elevator licensure program and went into effect following legislative review November 30, 2011.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? As the fees are to remain constant, revenues are anticipated to remain consistent with the initial year's revenues (approximately \$43,200).

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? The costs of administering the elevator mechanic licensing program are anticipated to remain relatively constant after the first year of implementation and are offset by the revenues received for the program.

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

Revenues (+/-): Maintained revenues; fees are not being

amended.

Expenditures (+/-): Maintained expenditures.

Other Explanation:

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

815 KAR 4:060. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 198B.030, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: 198B.030, 198B.4009, 198B.4023(7), 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 to 198B.540. KRS 198B.4025 authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs. This administrative regulation establishes the requirements for approval of continuing education programs in addition to those approved statutorily.

Section 1. Requirements for Continuing Educational Provider Approval. (1) For a Continuing Education Provider to be approved by the department, the applicant shall either be a:

- (a) Trade Association with affiliation to the Elevator Trade;
- (b) Trade school;
- (c) College;
- (d) Technical school;

(e) Business dedicated solely to providing continuing education and that provides at least one (1) course in each of the congressional districts quarterly;

(f) Elevator company that employs full-time training personnel to conduct continuing education programs providing continuing education for elevator mechanics only; or

(g) Elevator manufacturer or distributor that employs full time training personnel to conduct continuing education programs providing continuing education for elevator mechanics only.

(2)(a) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval.

(b) Registration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form EV-5, Application for Approval as a Continuing Education Course Provider for Elevator Licensure and shall include the following:

- (a) Company name;
- (b) Contact person;
- (c) Mailing address;
- (d) Email address;
- (e) Telephone number; and
- (f) Fax number.

(4) The department shall maintain a list of approved continuing education course providers.

(5) Each course provider shall report to the department a change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved, the provider shall distribute a questionnaire to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form EV-6, Application for Continuing Education Course for Elevator Licensure, for each course offered by the course provider.

(2)(a) A Form EV-6, Application for Continuing Education Course for Elevator Licensure[EV-5, Approval as a Continuing Education Course Provider for Elevator Licensure], shall be submitted only by an approved provider registered with the depart-

ment.

(b) A form EV-6, Application for Continuing Education Course for Elevator Licensure~~[EV-5, Approval as a Continuing Education Course Provider for Elevator Licensure]~~, shall be submitted at least sixty (60) days prior to the course's offering.

(3) A continuing education course shall provide instruction in at least one (1) of the subject areas specified in 815 KAR 4:050, Section 1(2)(a) through (d) and Section 2(2)(a) through (c).

(4) The course application shall include the following:

- (a) Name of the course;
- (b) Name and registration number of the provider;
- (c) A course syllabus;
- (d) Name of the instructor or presenter along with his or her qualifications;
- (e) The amount of actual time needed to present the course;
- (f) The objectives of the course; and
- (g) A statement of the practicality of the course to the elevator trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval or denial.

(6) Course approval shall be valid for two (2) years from the date of department approval.

(7)(a) The department shall issue a course number for each approved course.

(b) The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) A provider shall submit to the department a quarterly schedule including dates and locations of courses by January 1, April 1, July 1, and October 1 annually.

(9) The department shall receive notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Elevator Section.

(10) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to scheduled classes unless the governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant shall have the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course.

(d) A provider shall not cancel a course with ten (10) or more registrants, unless it is the result of an emergency.

Section 3. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for at least three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

- (b) An attendance sign-in and sign-out sheet; and
- (c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) A certificate of completion shall contain the following information about the individual participant:

- 1. Name;
- 2. Address;
- 3. License number;
- 4. Date of attendance; and
- 5. Course completed.

(c) One (1) copy of the certificate of completion shall be:

- 1. Sent to the department electronically;
- 2. Retained on file by the provider in compliance with subsection (1) of this section of this section; and
- 3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department shall not be prohibited from attending an approved continuing education course to ensure that:

- (a) The course meets the stated objectives; and
- (b) Applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be revoked if the provider:

- (1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;
- (2) Does not provide complete and accurate information in either the initial registration or in notification of changes to the information;
- (3) Advertises a course as being approved by the department prior to receiving approval; or
- (4) Fails to comply with the requirements of this administrative regulation.

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

(a) "Application for Approval as a Continuing Education Course Provider for Elevator Licensure", Form EV-5, October 2011; and

(b) "Application for Continuing Education Course for Elevator Licensure", Form EV-6, October 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 10, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012, at 10:00 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2012 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for elevator continuing education providers and courses.

(b) The necessity of this administrative regulation: This amendment is necessary to correct a form number and title of the form which was incorporated by reference upon initial enactment of this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.4025 authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish the requirements for approval of elevator continuing education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements and procedures for becoming an approved elevator continuing education provider and course for elevator licensees.

(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 corrects a form number and title of a form which was incorporated by reference upon initial enactment of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment provides consistency between the regulation and the forms incorporated by reference to eliminate confusion which currently exists between the regulation and the forms utilized.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.4025 provides that the Department may approve education courses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for consistency for elevator continuing education providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, Elevator Section, and elevator continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will utilize the criteria established in approving elevator continuing education providers and classes. The Division and Section will confirm that continuing education classes taken by licensees are approved programs in compliance with statutory mandate of KRS 198B.4025.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are minimal administrative costs associated with the implementation of continuing education program approvals which are anticipated to remain constant from historical figures. There is no anticipated change in costs to the agency resulting from this clerical amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By having established criteria for approval as an elevator continuing education provider, elevator licensees should receive continuing education that educates on applicable codes, safety and the elevator trade.

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

(a) Initially: Administrative costs are negligible.

(b) On a continuing basis: Administrative costs are anticipated to remain stable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing funds for the Division of Building Codes Enforcement, Elevator Section.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: the fees (restricted funds) have been established and are sufficient to offset expenditures for this program. No change in fees or funding are necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees nor increases any existing fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all elevators continuing education providers and courses are treated equally under the provisions of this

administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement, and Elevator Section will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.030, 198B.4009 and 198B.4025.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The administration costs to approve continuing education programs are minimal and included within normal operational costs of the section.

(d) How much will it cost to administer this program for subsequent years? The administration costs to approve continuing education programs are minimal and included within normal operational costs of the section.

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

Revenues (+/-): N/A

Expenditures (+/-): Minimal and included within the administration costs of the elevator licensure program.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(Amendment)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(9), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to establish criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who: (a)1. Is di-

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rectly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;
- (b) Has undergone KASPER training; and
- (c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy which has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(5) "Patient identifier" means a patient's:

- (a) Full name;
- (b) Address, including zip code;
- (c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(6) ["KASPER Reporting Form" means a form that:

(a) Is in the format of the "KASPER Reporting Form" incorporated by reference in Section 7 of this administrative regulation; and

(b) Contains the information specified by Section 2(2) of this administrative regulation.

(7) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

Section 2. Data Reporting. (1) A dispenser or a facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2) Reports pursuant to subsection (1) of this section shall not be required for:

(a) A long-term care facility as defined by KRS 216.510(1);

(b) An ambulance provider; or

(c) A jail, correctional or detention facility, or a juvenile detention facility.

(3) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

- (a) Patient identifier;
- (b) National drug code of the drug dispensed;
- (c) Metric quantity of drug dispensed;
- (d) Date of dispensing;
- (e) Estimated day's supply dispensed;
- (f) Drug Enforcement Administration registration number of the prescriber;
- (g) Serial number assigned by the dispenser; and
- (h) The Drug Enforcement Administration registration number of the dispenser.

(4)(a) Prior to July 1, 2013, [(3)] the data identified in subsection (3) [(2)] of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension.

(b) Effective July 1, 2013, the data identified in subsection (3) of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension.

(5) [(4)] (a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or
2. The dispenser cannot meet the deadline established by subsection (4) [(3)] of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(6) [(5)] An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(7) [(6)] Except as provided in subsection (9) of this section, the data shall be transmitted by:

- (a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;
- (b) ~~Double-sided, high-density micro-floppy disk;~~
- (c) ~~One-half (1/2)-inch nine (9)-track 1600 or 6250 BPI magnetic tape;~~
- (d) Secure File Transfer Protocol;
- (e) ~~https protocol; or~~
- (f) ~~CD/DVD; or~~
- (g) Secure Virtual Private Network connection.

(8) [(7)] The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Substances", developed by the American Society for Automation in Pharmacy, Version 4.1 [May 1995], or a comparable format approved by the branch.

(9) [(8)] A dispenser who does not have an automated record-keeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances", shall report the data identified in subsection (3) of this section using an Internet accessible web portal designated by the cabinet. [be granted a waiver from the electronic reporting requirement if the dispenser:

(a) Makes a written request to the branch within twenty-four (24) hours of discovery and of the circumstances necessitating the request, or on the next date that state offices are open for business following the discovery; and

(b) Agrees in writing to immediately begin reporting the data by submitting a completed "KASPER Reporting Form" or comparable document approved in writing by the branch.]

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at

www.chfs.ky.gov/KASPER [<http://chfs.ky.gov/oig/kasper>].

(3) A request for a KASPER provider report from a peace officer authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the "Request for KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may request a KASPER report on the decedent [one (1) of the following forms:

(a) For law enforcement, on the "Request for Law Enforcement KASPER Report", Form DCB-15L;

(b) For judiciary, on the "Request for KASPER Report (Court)", Form DCB-15J; or

(c) For pharmacy, on the "Request for KASPER Report", Form DCB-15P.]

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the Social Security number, driver's license number, or the number "000-00-0000", as applicable, of the parent or guardian shall be used.

(5) If a patient is an animal, [the owner's Social Security number, driver's license number, or] the number "000-00-0000" [; as

applicable,] shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER for a period of two (2) years plus the current year prior to its transfer to the State Archives Center.

Section 8. Error Resolution. (1) A patient to whom a report has been disclosed under KRS 218A.202(8) may request that information contained in KASPER be corrected if the patient believes that any information related to himself or herself is inaccurate. The patient or patient's representative shall:

(a) Contact the dispenser who reported the information required by Section 2(3) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient or patient's representative pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database; and

(b) Notify the patient or patient's representative that the corrected information has been transmitted.

(3) If a dispenser maintains that information regarding the dispensing of a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the Drug Enforcement and Professional Practices Branch (DEPPB) to identify the source of an error in the KASPER report, and the cabinet shall correct the information in the KASPER database.

(4) Upon correction of information in the KASPER database pursuant to subsection (3) of this section, cabinet staff shall notify the patient or patient's representative within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

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

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, Version 4.1; and [May, 1995;]

(b) ["KASPER Reporting Form", July 2008;

(c) "Request for [Law Enforcement] KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L, 12/10; 5/06;

(d) "Request for KASPER Report (Court)", Form DCB-15J, 5/06; and

(e) "Request for KASPER Report", Form DCB-15P, 5/06.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [This material is also available online at <http://chfs.ky.gov/oig/KASPER.htm>.]

MARY REINLE BEGLEY, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 20, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2012, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 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: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) system, which requires all dispensers of controlled substances to report to the Cabinet each medication dispensed, including the date, time, and person to whom a medication was dispensed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to the KASPER system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.202 by establishing the KASPER system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed in the Commonwealth. This administrative regulation is consistent with the policy mandate of KRS 218A.202 and assists in the identification of unauthorized use and dispensation of controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the KASPER system and sets forth the mandatory reporting requirements for dispensers of controlled substances.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that the following practitioners and facilities are not required to report dispensing data to KASPER: (1) individuals licensed to practice veterinarian medicine under KRS Chapter 321; (2) long-term care facilities; (3) ambulance providers; and (4) correctional facilities. Pursuant to 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1), this amendment establishes a one day reporting requirement which shall be effective July 1, 2013, establishes a data retention requirement, and provides for an error resolution process. This amendment further clarifies that a medical examiner engaged in a death investigation pursuant to KRS 72.026 may request a KASPER report on the decedent.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing KASPER system requirements for monitoring Schedules II, III, IV, and V controlled substances that are dispensed in the Commonwealth.

(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 demonstrating compliance with 2012 (Extra. Sess.) Ky. Acts ch. 1 (2012 SS HB 1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every practitioner and pharmacist in the Commonwealth required by state law

to use the KASPER system.

(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: Pursuant to KRS 218A.202(3), dispensers will be required to report data to KASPER within one (1) day of the dispensing. This requirement will be effective on July 1, 2013.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners or pharmacies in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the effectiveness of the KASPER system, and includes an error resolution process by which a patient may request that information contained in KASPER be corrected if the patient believes that such data is inaccurate.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under the Hal Rodgers Prescription Drug Monitoring Program and proceeds from the National Mortgage Settlement.

(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 amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 every practitioner and pharmacist in the Commonwealth who dispenses controlled substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202, 218A.240, 218A.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 1:145. Supports for community living services for an individual with an intellectual or~~mental retardation or a~~ developmental disability.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds~~for the provision of medical assistance to Kentucky's indigent citizenry~~. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with an intellectual or~~mental retardation or a~~ developmental disability as an alternative to placement in an intermediate care facility for an individual with an intellectual or~~mental retardation or a~~ developmental disability, including a consumer directed option pursuant to KRS 205.5606. The policies shall apply to supports for community living (SCL) waiver service providers who provide services and SCL waiver service recipients who receive services pursuant to this administrative regulation. A new SCL waiver program is being established pursuant to 907 KAR 12:010 which establishes service and coverage policies for SCL waiver recipients which become effective when the recipient transitions to the new SCL waiver during the month of the recipient's next birthday. Until an SCL waiver recipient transitions to the new SCL waiver program, the service and coverage policies established in this administrative regulation shall apply to the SCL waiver recipient and to any provider who provides SCL waiver services to the SCL waiver recipient.

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351; and

(b) Submitted to the department:

1. For a level of care determination; and

2. Annually thereafter.

(2) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(3) "Behavior support specialist" means an individual who has a master's degree from an accredited institution with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

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(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waivers that allow recipients to:

- (a) Assist with the design of their programs;
- (b) Choose their providers of services; and
- (c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

(10) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

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

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

(13)(12) "Developmental disability" means a disability that:

- (a) Is manifested prior to the age of twenty-two (22);
- (b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in: [mental retardation or related conditions that:]

1. [Result in] An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability [mental retardation]; and

2. Are a direct result of, or are influenced by, the person's [substantial] cognitive deficits. [(13) "DMHMR" means the Department for Mental Health and Mental Retardation Services.]

(14) "DMR" means the Division of Mental Retardation in the Department for Behavioral Health, Developmental and Intellectual Disabilities [Mental Health and Mental Retardation Services].

(15) "Electronic signature" is defined by KRS 369.102(8).

(16) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

- (a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
- (b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(17) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(18) "ICF ID" means an intermediate care facility for an individual with an intellectual or developmental disability ["ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability].

(19) "Intellectual disability" or "ID" means a demonstration:

(a) 1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

- a. Communication;
- b. Self-care;
- c. Home living;
- d. Social or interpersonal skills;
- e. Use of community resources;
- f. Self-direction;
- g. Functional academic skills;
- h. Work;
- i. Leisure; or
- j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(20) "Level of care determination" means a determination by

the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(21)(20) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(22)(24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(23)(22) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130. [(23) "Mental retardation" means that a person has:

- (a) Significantly sub-average intellectual functioning;
- (b) An intelligence quotient of approximately seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

- 1. Communication;
- 2. Self-care;
- 3. Home living;
- 4. Social or interpersonal skills;
- 5. Use of community resources;
- 6. Self-direction;
- 7. Functional academic skills;
- 8. Work;
- 9. Leisure; or
- 10. Health and safety; and

(d) Had an onset before eighteen (18) years of age.]

(24) "Occupational therapist" is defined by KRS 319A.010(3).

(25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards the cost of care in order to maintain Medicaid eligibility.

(27) "Physical therapist" is defined by KRS 27.010(2).

(28) "Physical therapist assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(29) "Plan of Care" or "POC" means a written individualized plan developed by:

- (a) An SCL recipient or an SCL recipient's legal representative;
- (b) The case manager or support broker; and
- (c) Any other person designated by the SCL recipient if the SCL recipient designates any other person.

(30) "Psychologist" is defined by KRS 319.010(8).

(31) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32) "Registered nurse" or "RN" means a person who is currently licensed as defined in KRS 314.011(5), and who has one (1) year or more experience as a professional nurse.

(33) "Representative" is defined in KRS 205.5605(6).

(34) "SCL intellectual disability [mental retardation] professional" or "SCL IDP" ["SCL-MRP"] means an individual who has at least one (1) year of experience working with persons with intellectual [mental retardation] or developmental disabilities and:

- (a) Is a doctor of medicine or osteopathy;
- (b) Is a registered nurse; or
- (c) Holds at least a bachelor's degree from an accredited institution in a human services field including sociology, special education, rehabilitation counseling, or psychology.

(35) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(36) "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(37) "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.

(38) "Speech-language pathologist" is defined by KRS 334A.020(3).

(39) "Support broker" means an individual designated by the department to:

- (a) Provide training, technical assistance and support to a consumer; and
- (b) Assist the consumer in any other aspects of CDO.

(40) "Support spending plan" means a plan for a consumer that identifies:

- (a) CDO services requested;
- (b) Employee name;
- (c) Hourly wage;
- (d) Hours per month;
- (e) Monthly pay;
- (f) Taxes; and
- (g) Budget allowance.

(41) "Supports for community living" or "SCL" means home and community-based waiver services for an individual with an intellectual or mental retardation or a developmental disability.

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

- (a) Be placed on the SCL waiting list in accordance with Section 7 of this administrative regulation;
- (b) Receive notification of potential SCL funding in accordance with Section 7 of this administrative regulation;
- (c) Meet ICF-MR-DD patient status requirements established in 907 KAR 1:022;
- (d) Meet Medicaid eligibility requirements established in 907 KAR 1:605;
- (e) Submit an application packet to the department which shall contain:

- 1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;
- 2. The MAP-351 Assessment Form;
- 3. The results of a physical examination that was conducted within the last twelve (12) months;
- 4. A MAP-10, statement of the need for long-term care services, which shall be signed and dated by a physician or an SCL MRP and be less than one (1) year old;
- 5. The results of a psychological examination completed by a licensed psychologist or psychologist with autonomous functioning;
- 6. A social case history which is less than one (1) year old;
- 7. A projection of the needed supports and a preliminary MAP-109 plan of care for meeting those needs;
- 8. A MAP-24C documenting an individual's status change; and
- 9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and
- (f) Receive notification of an admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

- (a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;
 - (b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and
 - (c) An ICF-MR-DD level of care determination shall be performed by the department at least once every twelve (12) months.
- (3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or other facility.

(4) The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-MR-DD services.

(5) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.

1. The individual or legal representative shall have the burden of documenting good cause, including:

- a. A statement signed by the recipient or legal representative;
- b. Copies of letters to providers;
- c. Copies of letters from providers; and
- d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

- a. Sixty (60) days for an individual who does not reside in a

facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

- a. A statement signed by the recipient or legal representative;
- b. Copies of letters to providers;
- c. Copies of letters from providers; and
- d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

- a. Sixty (60) days for an individual who does not reside in a facility; and
- b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;
- (c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or
- (d) An SCL recipient does not meet ICF-MR-DD patient status criteria.

(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

(a) Simultaneous notice to the SCL recipient or legal representative, the case manager or support broker, the department, and DMR at least thirty (30) days prior to the effective date of the action, which shall include:

- 1. A statement of the intended action;
 - 2. The basis for the intended action;
 - 3. The authority by which the action is taken; and
 - 4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;
- (b) Submittal of a MAP-24C to the department and to DMR at the time of the intended action; and
- (c) The case manager or support broker in conjunction with the provider to:

- 1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;
- 2. Provide assistance to the SCL recipient in making contact with another SCL provider;
- 3. Arrange transportation for a requested visit to an SCL provider site;
- 4. Provide a copy of pertinent information to the SCL recipient or legal representative;
- 5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured;
- 6. Continue to provide supports until alternative services or another placement is secured; and
- 7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department and to DMR.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDO Provider Participation. (1) In order to provide a non-CDO SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

- (a) Be certified by the department prior to the initiation of the service;
 - (b) Be recertified at least annually by the department; and
 - (c) Have a main office within the Commonwealth of Kentucky.
- (2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673, and 902 KAR 20:078.
- (3) An SCL provider shall have a governing body that shall:

- (a) Be a legally constituted entity within the Commonwealth of Kentucky;
- (b) Not contain a majority of owners;
- (c) Be responsible for the overall operation of the organization that shall include:
 1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;
 2. Appointing and annually evaluating the executive director;
 3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;
 4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and
 5. Orienting a new member of the governing body to the operation of the organization, including the roles and responsibilities of board members.
- (4) An SCL provider shall:
 - (a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient:
 1. Child;
 2. Parent;
 3. Sibling; or
 4. Spouse;
 - (b) Not enroll an SCL recipient for whom they cannot meet the support needs;
 - (c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and
 - (d) Document any denial for a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.
- (5) An SCL provider shall maintain documentation of its operations which shall include:
 - (a) An annual review of written policy and procedures;
 - (b) A written description of available SCL waiver services;
 - (c) A current table of organization;
 - (d) A memorandum of understanding with an SCL case management provider with whom they share plans of care;
 - (e) Information regarding satisfaction of an SCL recipient and the utilization of that information;
 - (f) A quality improvement program; and
 - (g) Documentation of achievement of outcomes based on best practice standards as approved by the department.
- (6) An SCL provider shall:
 - (a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;
 - (b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;
 - (c) Meet the following requirements if responsible for the management of SCL recipient funds:
 1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;
 2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and
 3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.
 - (7) An SCL provider shall have a written statement of its mission and values, which shall:
 - (a) Support empowerment and informed decision-making;
 - (b) Support and assist people to remain connected to natural support networks; and
 - (c) Promote dignity and self-worth.
 - (8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:
 - (a) Require a timely response to an inquiry;
 - (b) Require the opportunity for interaction by direct care staff;
 - (c) Require prompt notification of any unusual occurrence;
 - (d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's

- right of privacy;
- (e) Require involvement in decision making regarding the selection and direction of the service provided; and
- (f) Consider the cultural, educational, language and socioeconomic characteristics of the family being supported.
- (9) An SCL provider shall ensure the rights of an SCL recipient by:
 - (a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:
 1. The right to time, space, and opportunity for personal privacy;
 2. The right to communicate, associate and meet privately with the person of choice;
 3. The right to send and receive unopened mail;
 4. The right to retain and use personal possessions including clothing and grooming articles; and
 5. The right to private, accessible use of the telephone;
 - (b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and
 - (c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).
- (10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that:
 1. A covered service is provided; or
 2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);
- (b) All records and incident reports shall be made available to the:
 1. Department;
 2. DBHDID[DMHMR] or its designee;
 3. Cabinet for Health and Family Services, Office of Inspector General or its designee;
 4. General Accounting Office or its designee;
 5. Office of the Auditor of Public Accounts or its designee;
 6. Office of the Attorney General or its designee;
 7. DCBS; or
 8. Centers for Medicare and Medicaid Services.
- (11) An SCL provider shall cooperate with monitoring visits from monitoring agents.
- (12) An SCL provider shall maintain a record for each SCL recipient served that shall:
 - (a) Be recorded in permanent ink;
 - (b) Be free from correction fluid;
 - (c) Have a strike through each error that is initialed and dated; and
 - (d) Contain no blank lines in between each entry.
- (13) A record of each SCL recipient who is served shall:
 - (a) Contain all information necessary for the delivery of the SCL recipient's services;
 - (b) Be cumulative;
 - (c) Be readily available;
 - (d) Contain documentation which meets the requirements of Section 4 of this administrative regulation;
 - (e) Contain the following specific information:
 1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);
 2. The intake or face sheet;
 3. The MAP-351 Assessment form completed at least annually;
 4. The current plan of care;
 5. The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes;
 6. A list containing emergency contact telephone numbers;
 7. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;
 8. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
 9. A recognizable photograph of the SCL recipient;
 10. Legally-adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;
 11. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;

12. The SCL recipient's social history updated at least annually;

13. The results of an annual physical exam;

14. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

15. Psychological evaluation;

16. Current level of care certification; and

17. The MAP-552K, Department for Community Based Services Notice of Availability for Long Term Care/Waiver Agency/Hospice Form in the case management and residential record;

(f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

(g) Have the safety from loss, destruction or use by an unauthorized person ensured by the provider;

(h) Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record; and

(i) Have a corresponding legend which the provider shall make readily accessible.

(14) An SCL provider shall:

(a) 1. Ensure that each new staff or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer;

2. For existing staff, maintain documentation of each staff person's or if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test;

3.a. Ensure that an employee or volunteer who tests positive for TB or has a history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and

b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer he or she shall be administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease; and

4. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present;

(b) Have written personnel guidelines for each employee to include:

1. Salary range;

2. Vacation and leave procedures;

3. Health insurance;

4. Retirement benefits;

5. Opportunity for continuing education; and

6. Grievance procedures;

(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;

(d) Annually review each job description;

(e) For each potential employee obtain:

1. Prior to employment, the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

2. Within thirty (30) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to employment, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(f) Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

(g) For a volunteer expected to perform direct care or a supervisory function obtain:

1. Prior to the date the individual began serving as a volunteer, the results of a criminal record check from the Kentucky Adminis-

trative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

2. Within thirty (30) days of the date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to the date the individual began serving as a volunteer, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing direct care staff or a supervisory function, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

(i) Not employ or place an individual as a volunteer who:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction;

3. Has a conviction of abuse or sale of illegal drugs during the past five (5) years;

4. Has a conviction of abuse, neglect or exploitation;

5. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or

6. Is listed on the nurse aide abuse registry;

(j) Not permit an employee or volunteer to transport an SCL recipient if the individual has a driving under the influence (DUI) conviction during the past year; and

(k) Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall have:

(a) An executive director who:

1.a. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; or

b. Is a registered nurse; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with an intellectual or mental retardation or a developmental disability;

(b) A program director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with intellectual or mental retardation or developmental disabilities;

2. Is an SCL MRP; and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) Adequate direct-contact staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Is able to adequately communicate with recipients and staff;

2. Has a valid Social Security number or valid work permit if not a U.S. citizen;

3. Can understand and carry out instructions; and

4. Has ability to keep simple records; and

(d) Adequate supervisory staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Has a minimum of one (1) year experience in providing services to individuals with an intellectual or mental retardation or developmental disability;

2. Is able to adequately communicate with the recipients, staff, and family members;

3. Has a valid Social Security number or valid work permit if not a U.S. citizen; and

4. Has ability to perform required record keeping.

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. An operational smoke detector placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahrenheit;

(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

1. Safe storage and use; and

2. That firearms and ammunition are permitted:

a. Only in a family home provider or an adult foster care home; and

b. Only if stored separately and under double lock;

(f) Establishing written procedures concerning the safe storage of common household items;

(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(h) Ensuring that staff administering medication:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional per a DMR-approved curriculum and documented competency on medication administration, medication cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and

d. Be documented on a medication administration form and properly disposed of, if discontinued; and

(i) Policy and procedures for ongoing monitoring of medication administration.

(17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;

(c) Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and

(d) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;

(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;

(c) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(d) Ensure that each employee prior to independent functioning, completes training which shall include:

1. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or

other nationally-accredited organization;

3. Crisis prevention and management;

4. Identification and prevention of abuse, neglect, and exploitation;

5. Rights of individuals with disabilities; and

6. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(e) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include:

1. Medication administration training per cabinet-approved curriculum;

2. Medications and seizures;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

5. Crisis prevention and management;

6. Identification and prevention of abuse, neglect, and exploitation;

7. Rights of individuals with disabilities; and

8. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(f) Ensure that all employees complete core training, consistent with a DBHDID-approved[DMHMR-approved] curriculum, no later than six (6) months from the date of employment, which shall include:

1. Values, attitudes, and stereotypes;

2. Building community inclusion;

3. Person-centered planning;

4. Positive behavior support;

5. Human sexuality and persons with disabilities;

6. Self determination; and

7. Strategies for successful teaching;

(g) Not be required to receive the training specified in this section if the provider is:

1. An occupational therapist providing occupational therapy;

2. A physical therapist providing physical therapy;

3. A psychologist or psychologist with autonomous functioning providing psychological services; or

4. A speech-language pathologist providing speech therapy;

(h) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:

1. Orientation to the agency;

2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Cardiopulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

(i) Ensure that each new case manager hired complete DMR-approved case management training within The first six (6) months from the date of hire.

Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

(a) Be prior authorized by the department; and

(b) Be provided pursuant to the plan of care.

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a nonresidential or community setting that

may;

- a. Be a fixed location; or
- b. Occur in public venues.
4. Not be diversional in nature;
5. Be provided as on-site services which shall:
 - a. Include facility-based services provided on a regularly-scheduled basis;
 - b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or
 - c. Prepare the participant for transition from school to work or adult support services;
6. Be provided as off-site services which:
 - a. Shall include services provided in a variety of community settings;
 - b. Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;
 - c. Shall be designed to result in increased ability to access community resources without paid supports;
 - d. Shall provide the opportunity for the participant to be involved with other members of the general population;
 - e. May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;
 - f. May be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and
 - g. May be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;
7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;
8. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;
9. Be provided at a time mutually agreed to by the recipient and provider;
- 10.a. Be provided to recipients age twenty-two (22) or older; or
- b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;
11. Be documented by:
 - a. A time and attendance record which shall include
 - (i) The date of the service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service; and
 - b. A detailed monthly summary staff note which shall include:
 - (i) The month, day, and year for the time period covered by each note written;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
 - (iii) The signature, date of signature, and title of individual preparing the summary staff note;
12. Be limited to five (5) days per week, 255 days maximum per year;
13. Not exceed eight (8) hours per day, five (5) days per week; and
14. Not exceed sixteen (16) hours per day if provided in combination with community living supports or supported employment;
 - (b) An assessment service including a comprehensive assessment which shall:
 1. Identify an SCL recipient's needs and the services that the SCL recipient or his or her family cannot manage or arrange for on his or her behalf;
 2. Evaluate an SCL recipient's physical health, mental health, social supports, and environment;
 3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;
 4. Be conducted within seven (7) calendar days of receipt of the request for assessment;
 5. Include at least one (1) face-to-face contact with the SCL

recipient and, if appropriate, his or her family by the assessor in the SCL recipient's home; and

6. Not be reimbursable if the individual does not receive a level of care certification;

(c) A reassessment service which shall:

1. Determine the continuing need for SCL waiver services;
2. Be performed at least every twelve (12) months;
3. Be conducted using the same procedures as for an assessment service;
4. Be conducted by a SCL case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
3. Include a functional assessment of the SCL recipient's behavior which shall include:
 - a. An analysis of the potential communicative intent of the behavior;
 - b. The history of reinforcement for the behavior;
 - c. Critical variables that preceded the behavior;
 - d. Effects of different situations on the behavior; and
 - e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;
4. Include the development of a behavioral support plan which shall:
 - a. Be developed by the behavioral specialist;
 - b. Be implemented by SCL provider staff in all relevant environments and activities;
 - c. Be revised as necessary;
 - d. Define the techniques and procedures used;
 - e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
 - f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
 - g. Reflect the use of positive approaches; and
 - h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
5. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;
6. Include the monitoring of an SCL recipient's progress which shall be accomplished through:
 - a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
 - b. The reports of an SCL provider involved in implementing the behavioral support plan;
7. Provide for the design, implementation, and evaluation of systematic environmental modifications;
8. Be provided by a behavior support specialist who shall have:
 - a. A master's degree with formal graduate course work in a behavioral science; and
 - b. One (1) year of experience in behavioral programming;
9. Be documented by a detailed staff note which shall include:
 - a. The date of the service;
 - b. The beginning and ending time; and
 - c. The signature, date of signature and title of the behavioral specialist; and
10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;
- (e) Case management which shall include:
 1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility

process;

2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;

3. Assisting an SCL recipient and the support team to develop, update, and monitor the plan of care which shall:

a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;

b. Be updated at least annually or as changes occur;

c. Be submitted on the MAP-351; and

d. Include any modification to the plan of care and be sent to the department within fourteen (14) days of the effective date that the change occurs with the SCL recipient;

4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;

6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;

7. Timely distribution of the plan of care, crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient;

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipient;

14. Monitoring all of the supports provided to an SCL recipient;

15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an ICF-MR-DD;

c. Admitted to a hospital;

d. Transferred to another Medicaid Waiver Program; or

e. Moved to another SCL residence;

16. Establishing a human rights committee which shall:

a. Include an:

(i) SCL recipient;

(ii) Individual not affiliated with the SCL provider; and

(iii) Individual who has knowledge and experience in rights issues;

b. Review and approve, prior to implementation and at least annually thereafter, all plans of care with rights restrictions;

c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and

d. Review the use of a psychotropic medication by an SCL recipient without an Axis I diagnosis;

17. Establishing a behavior intervention committee which shall:

a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;

b. Be separate from the human rights committee;

c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and

d. Review the use of a psychotropic medication by an SCL recipient without an Axis I diagnosis and recommend an alternative intervention if appropriate;

18. Documentation with a monthly summary note which shall include:

a. Documentation of monthly contact with each chosen SCL provider which shall include monitoring of the delivery of services and the effectiveness of the plan of care;

b. Documentation of monthly face-to-face contact with an SCL recipient; and

c. Progress towards outcomes identified in the plan of care;

19. Provision by a case manager who shall:

a. Have a bachelor's degree from an accredited institution in a human services field;

b. Be a registered nurse;

c. Be a qualified social worker;

d. Be a licensed marriage and family therapist;

e. Be a professional clinical counselor;

f. Be a certified psychologist; or

g. Be a licensed psychological practitioner;

20. Supervision by a case management supervisor who shall be an SCL MRP; and

21. Documentation with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(f) Children's day habilitation which shall be:

1. The provision of support, training, and intervention in the areas of:

a. Self-care;

b. Sensory/motor development;

c. Daily living skills;

d. Communication; and

e. Adaptive and social skills;

2. Provided in a nonresidential or community setting;

3. Provided to enable the recipient to participate in and access community resources;

4. Provided to help remove or diminish common barriers to participation in typical roles in community life;

5. Provided at a time mutually agreed upon by the recipient and provider;

6. Limited to:

a. Individuals who are in school and up to sixteen (16) years of age;

b. Up to eight (8) hours per day, five (5) days per week; and

c. Up to sixteen (16) hours per day in combination with community living supports; and

7. Documented by:

a. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly staff note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, or maintenance of outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the summary staff note;

(g) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

- i. Leisure choices;
- j. Participation in community activities;
- k. Therapeutic goals; or
- l. Nonmedical care not requiring nurse or physician intervention;
- 3. Not replace other work or day activities;
- 4. Be provided on a one-on-basis;
- 5. Not be provided at an adult day-training or children's day-habilitation site;
- 6. Be documented by:
 - a. A time and attendance record which shall include:
 - (i) The date of the service;
 - (ii) The beginning and ending time of the service; and
 - (iii) The signature, date of signature and title of the individual providing the service; and
 - b. A detailed monthly summary note which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
 - (iii) The signature, date of signature and title of the individual preparing the summary note; and
- 7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;
- (h) Occupational therapy which shall be:
 - 1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;
 - 2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
 - 3. Training of other SCL providers on improving the level of functioning;
 - 4. Exclusive of maintenance or the prevention of regression;
 - 5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
 - 6. Documented by a detailed staff note which shall include:
 - a. Progress toward outcomes identified in the plan of care;
 - b. The date of the service;
 - c. Beginning and ending time; and
 - d. The signature, date of signature and title of the individual providing the service;
 - (i) Physical therapy which shall be:
 - 1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
 - 2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
 - 3. Training of another SCL provider on improving the level of functioning;
 - 4. Exclusive of maintenance or the prevention of regression;
 - 5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
 - 6. Documented by a detailed staff note which shall include:
 - a. Progress made toward outcomes identified in the plan of care;
 - b. The date of the service;
 - c. Beginning and ending time of the service; and
 - d. The signature, date of signature and title of the individual providing the service;
 - (j) Psychological services which shall:
 - 1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;
 - 2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;
 - 3. Include:
 - a. The administration of psychological testing;
 - b. Evaluation;
 - c. Diagnosis; and
 - d. Treatment;

- 4. Be incorporated into the plan of care with input from the psychological service provider for the development of program-wide support;
- 5. Be provided by a psychologist or a psychologist with autonomous functioning; and
- 6. Be documented by a detailed staff note which shall include:
 - a. The date of the service;
 - b. The beginning and ending time of the service; and
 - c. The signature, date of signature and title of the individual providing the service;
- (k) Residential support service which shall:
 - 1. Include twenty-four (24) hour supervision in:
 - a. A staffed residence which shall not have greater than three (3) recipients of publicly-funded supports in a home rented or owned by the SCL provider;
 - b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than eight (8) SCL recipients;
 - c. A family home provider which shall not have greater than three (3) recipients of publicly-funded supports living in the home; or
 - d. An adult foster care home which shall not have greater than three (3) recipients of publicly-funded supports aged eighteen (18) or over living in the home;
 - 2. Utilize a modular home only if the:
 - a. Wheels are removed;
 - b. Home is anchored to a permanent foundation; and
 - c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;
 - 3. Not utilize a motor home;
 - 4. Provide a sleeping room which ensures that an SCL recipient:
 - a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;
 - b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;
 - c. Does not share a room with an individual who presents a potential threat; and
 - d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient's health and comfort;
 - 5. Provide assistance with daily living skills which shall include:
 - a. Ambulation;
 - b. Dressing;
 - c. Grooming;
 - d. Eating;
 - e. Toileting;
 - f. Bathing;
 - g. Meal planning and preparation;
 - h. Laundry;
 - i. Budgeting and financial matters;
 - j. Home care and cleaning; or
 - k. Medication management;
 - 6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care;
 - 7. Provide or arrange for transportation to services, activities, and medical appointments as needed;
 - 8. Include participation in medical appointments and follow-up care as directed by the medical staff; and
 - 9. Be documented by a detailed monthly summary note which shall include:
 - a. The month, day, and year for the time period the note covers;
 - b. Progression, regression and maintenance toward outcomes identified in the plan of care;
 - c. Pertinent information regarding the life of the SCL recipient; and
 - d. The signature, date of signature, and title of the individual preparing the staff note;
 - (l) Respite service which shall be:
 - 1. Provided only to an SCL recipient unable to independently administer self-care;
 - 2. Provided in a variety of settings;
 - 3. Provided on a short-term basis due to absence or need for

relief of an individual providing care to an SCL recipient;

4. Provided only to an SCL recipient who resides in a family home provider, adult foster care home, or his or her own or family's home;

5. Limited to 1,440 hours per calendar year; and

6. Documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the individual providing the service;

(m) Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a MAP-95;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;

6. Meet applicable standards of manufacture, design and installation; and

7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;

(n) Speech therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;

2. A physician ordered rehabilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Be provided by a speech-language pathologist; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service; or

(o) Supported employment which shall be:

1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided in a variety of settings;

3. Provided on a one-to-one basis;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;

5. Exclusive of work performed directly for the supported employment provider;

6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

7. Documented by:

a. A time and attendance record with shall include:

(i) The date of service;

(ii) The beginning and ending time; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period the note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature and title of the individual preparing the note; and

8. Limited to forty (40) hours per week alone or in combination with adult day training.

and supports provided to an SCL recipient participating in CDO shall include:

(a) A home and community support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and

5.a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Leisure choices; or

(x) Participation in community activities;

(b) A community day support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(c) Goods or services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care and support spending plan.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO SCL setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on his or her behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if imminent danger to the consumer's health, safety, or welfare exists.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the SCL assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;

Section 5. Consumer Directed Option. (1) Covered services

(d) Complete, and submit to the department and to DMR, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional SCL services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a US citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Kentucky Administrative Office of the Courts or equivalent agency from any other state, for each state in which the individual resided or worked during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in de-

termining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals in an ICF-MR-DD.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraint;

3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the case manager or support broker; and

4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery;

c. The assistant director of the Division of Mental Retardation, DBHDID[DMHMR], or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death;

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. The assistant director of the Division of Mental Retardation, DBHDID[DMHMR], or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day.

(3) The following documentation with a complete written report

shall be submitted for a death:

- (a) A current plan of care;
 - (b) A current list of prescribed medications including PRN medications;
 - (c) A current crisis plan;
 - (d) Medication Administration Review (MAR) forms for the current and previous month;
 - (e) Staff notes from the current and previous month including details of physician and emergency room visits;
 - (f) Any additional information requested by DBHDID[DMHMR];
 - (g) A coroner's report when received; and
 - (h) If performed, an autopsy report when received.
- (4) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DBHDID[DMHMR], or designee on a monthly medication error report form by the 15th of the following month.

Section 7. SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his or her region of origin in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department a completed MAP-620, Application for MR-DD Services, which shall include the following:

- (a) A signature from a physician or an SCL MRP indicating medical necessity;
 - (b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and
 - (c) Completion of the Axis I, II, and III.
- (4) DBHDID[DMHMR] or its designee shall validate the MAP-620 application information.

(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD shall be September 22, 1995 or the date of admission to the ICF-MR-DD, whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(7) The order of placement on the SCL waiting list for an individual not residing in an ICF-MR-DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:

(a) Emergency. The need shall be classified as emergency if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

- 1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;
- 2. The death of the individual's primary caregiver and lack of alternative primary caregiver;
- 3. The lack of appropriate placement for the individual due to:
 - a. Loss of housing;
 - b. Inappropriate hospitalization; or
 - c. Imminent discharge from a temporary placement;
- 4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status;
- 5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS; or
- 6. Imminent or current institutionalization in an ICF-MR-DD;

(b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:

- 1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;
- 2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;
- 3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver; or
- 4. The individual exhibits an intermittent behavior or action that

requires hospitalization or police intervention;

(c) Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as determined by:

- 1. The individual is currently receiving a service through another funding source that meets his or her needs;
- 2. The individual is not currently receiving a service and does not currently need the service;
- 3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or
- 4. The individual is less than twenty-one (21) years of age.

(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his or her legal representative and case management provider if identified.

(10) In determining chronological status, the original date of receipt of a MAP-620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

(11) Maintenance of the SCL waiting list shall occur as follows:

(a) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and

(b)1. The department shall, at a minimum, annually update the waiting list during the birth month of an individual.

2. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program.

3. If a discrepancy is noted in diagnostic information at the time of the annual update, the department may request a current diagnosis of MR/DD signed by a physician or SCL MRP, including documentation supporting the diagnosis.

4. The requested data shall be received by the department within thirty (30) days from the date of the letter.

(12) Reassignment of category of need shall be completed based on the updated information and validation process.

(13) An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(14) If an individual on the SCL waiting list in the emergency category of need is placed in an ICF-MR-DD, the category of need shall not change.

(15) The criteria for removal from the SCL waiting list shall be:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) Review of documentation reveals that the individual does not have an intellectual disability [a mental retardation] diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;

(d) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list; or

(e) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:

- a. A signed statement by the individual or the legal representative;
- b. Copies of letters to providers;
- c. Copies of letters from providers; and
- d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

- a. Sixty (60) days for an individual who does not reside in a

facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:

(a) The individual shall be moved to the future planning category; and

(b) The chronological date shall remain the same.

(17) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the case management provider.

(18) The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date.

(19) The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.

(20) An individual shall be allocated potential funding based upon:

(a) His or her region of origin in accordance with KRS 205.6317(3) and (4);

(b) His or her category of need; and

(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:

(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.

(2) A SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, and contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(3) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

Section 9. Transition to New SCL Waiver. (1) The policies established in this administrative regulation shall apply to SCL waiver services provided:

(a) To an SCL waiver service recipient until the recipient transitions to the new SCL waiver program:

1. In accordance with 907 KAR 12:010; and

2. During the month of the SCL waiver recipient's next birthday; and

(b) By an SCL waiver service provider who provides a service to an SCL waiver service recipient who has not transitioned to the new SCL waiver service program established pursuant to 907 KAR 12:010.

(2) During the month of an SCL waiver recipient's next birthday, the SCL waiver recipient who remains approved to receive

SCL waiver services shall:

(a) Transition to a new SCL waiver program; and

(b) Receive services in accordance with 907 KAR 12:010 rather than in accordance with this administrative regulation.

(3) The policies established in this administrative regulation shall become null and void at the time that every eligible SCL waiver recipient served in accordance with this administrative regulation:

(a) Has transitioned to the new SCL waiver program; and

(b) Receives SCL waiver services in accordance with the policies established in 907 KAR 12:010.

Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in Section 7 of this administrative regulation.

Section 11. [40.] Incorporation by Reference. (1) "Supports for Community Living Manual, October 2007 edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012 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 September 14, 2012 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 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: Sheila Davis (502) 564-5560, Claudia Johnson (502) 564-7702, Karen Martin (502) 564-7540, or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service and coverage policies for the current Medicaid Supports for Community Living (SCL) waiver program. The Department for Medicaid Services (DMS) is implementing a new version of the SCL waiver program. Service and coverage policies for the new version will be established in 907 KAR 12:010 and reimbursement policies will be established in 907 KAR 12:020. Individuals will transition from the current SCL waiver program to the new SCL waiver program during the month of the recipient's next birthday. The service and coverage policies estab-

lished in this administrative regulation shall continue to apply to services provided to individuals receiving SCL waiver services under this regulation. At the time that all individuals have transitioned to the new SCL waiver program, this administrative regulation shall become null and void.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish service and coverage policies for the original Medicaid SCL waiver program until individuals receiving services under the original SCL waiver program have transitioned to the new SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program service and coverage policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program service and coverage policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the policies established in this administrative regulation will apply to current SCL waiver participants until the individuals transition to the new SCL waiver program during the month of their next birthday. The policies established in a new SCL waiver service and coverage regulation (907 KAR 12:010) will apply to individuals once they transition to the new version of the waiver.

(b) The necessity of the amendment to this administrative regulation: Due to the large number of SCL waiver program recipients – over, 3,500 individuals – DMS is unable to transition everyone to the new SCL waiver program concurrently; therefore, amending this regulation to establish a phased in approach is necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers and recipients of SCL waiver services will be affected by the amendment. Currently, there are 202 SCL waiver service providers and as of July 1, 2012 there were 3,569 recipients in the SCL waiver 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 current policies will continue to apply until an SCL waiver recipient transitions to the new waiver policies established in 907 KAR 12:010; thus, providers will need to follow the policies of this regulation for those still governed by it.

(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). Providers will benefit by receiving reimbursement for services and recipients will benefit from the staggered phase in by being able to continue receiving SCL waiver services (under this regulation) rather than shutting down this current version and implementing the new version at once – forcing many to receive no SCL waiver services while they wait to be approved for the new version.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the 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. Neither an increase in fees nor funding is necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

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:

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (Amendment)

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or~~mental retardation or a~~ developmental disability.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds~~[for the provision of medical assistance to Kentucky's indigent citizenry]~~. This administrative regulation establishes the reimbursement ~~poli-~~cies~~provisions~~ relating to home and community based waiver services provided to an individual with an intellectual or~~mental retardation or a~~ developmental disability as an alternative to placement in an intermediate care facility for an individual with an intellectual or~~mental retardation or a~~ developmental disability. The policies apply to supports for community living (SCL) waiver service providers who provide services to individuals who receive SCL waiver services pursuant to 907 KAR 1:145. A new SCL waiver program is being established pursuant to 907 KAR 12:010 which establishes service and coverage policies for SCL waiver recipients which shall apply upon the recipient transitioning to the new version of the SCL waiver program. The transition shall occur during the month of the recipient's next birthday. Until the SCL waiver recipient transitions to the new version of the SCL waiver program, the service policies established in 907 KAR 1:145 and reimbursement policies established in this administrative regulation shall apply to the SCL waiver recipient and to providers who provide services to the SCL waiver recipient.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual;
and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(3) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(4) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a

standardized tool used for the measurement of supportive services needed by an individual with a disability.

(5)[(3)] "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.

(6)[(4)] "Supports for community living services" or "SCL services" means community-based waiver services for an individual with an intellectual or~~mental retardation or a~~ developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual or~~mental retardation or a~~ developmental disability as established in 907 KAR 1:022; and

(b) Is authorized for an SCL service by the department.

(2) In order to be covered, a service shall be provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. SCL Reimbursement. (1) Specialized medical equipment and supplies shall:

(a) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;

(b) Be reimbursed:

1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and

2. Based on the submission of three (3) price estimates of which the lowest shall determine the amount of reimbursement; and

(c) Not include furniture, a recreational item, or a leisure item.

(2) A functional assessment to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.

(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.

(4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. (1) The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service:

Service	Unit of Service	Upper Payment Limit
Adult day training on-site	15 minutes	\$2.50
Adult day training off-site	15 minutes	\$3.00
Adult foster care	24 hours	\$112.49
Assess-ment/reassessment	1 assessment or reassessment	\$75.00
Behavior support	15 minutes	\$33.25
Case management	1 month	\$376.06
Children's day habilitation	15 minutes	\$2.50
Community living supports	15 minutes	\$5.54
Family home provider	24 hours	\$112.49
Group home	24 hours	\$126.35
Occupational therapy by occupational therapist	15 minutes	\$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	\$22.17
Physical therapy by physical therapist	15 minutes	\$22.17
Physical therapy by physical therapy assis-	15 minutes	\$22.17

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tant		
Psychological services	15 minutes	\$38.79
Respite	15 minutes	\$2.77
Specialized medical equipment and supplies	1 item	Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation.
Speech therapy	15 minutes	\$22.17
Staffed residence	24 hours	\$168.46
Supported employment	15 minutes	\$5.54

(2) Adult day training on-site and off-site shall be limited to:

(a) Forty (40) hours (160 units) per week; and

(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(3) Children's day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Non-Level II Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider shall receive an intensity payment if the provider meets the criteria established in subsection (2) of this section.

(2) A non-Level II intensity payment for a unit of service shall be:

(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;

(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and

(c) For the following SCL services:

1. Staffed residence;

2. Community living supports;

3. Respite;

4. Family home provider;

5. Group home;

6. Adult foster care home;

7. Adult day training on-site;

8. Adult day training off-site; or

9. Children's day habilitation.

(3) A non-Level II intensity payment for a unit of service shall be as follows:

Service	Intensity Payment
Adult day training on-site	\$0.40
Adult day training off-site	\$0.40
Children's day habilitation	\$0.40
Staffed residence	\$33.69
Community living	\$0.83
Respite	\$0.42
Family home provider	\$16.87
Group home	\$25.27
Adult foster care home	\$16.87

Section 6. Level II Intensity Payment. (1) The department shall reimburse an adult day health care center which qualifies for Level II reimbursement pursuant to 907 KAR 1:170 an intensity payment of fifty (50) cents per unit for adult day training on-site or adult day training off-site provided to an SCL recipient.

(2) If an SCL recipient qualifies an adult day health care center for a non-Level II intensity payment and a Level II intensity payment, the department shall pay the Level II intensity payment.

Section 7. All-Inclusive Enhanced Rate. (1) Effective September 1, 2006, the department shall reimburse an all-inclusive rate of \$125,000 per recipient per year to a group home, staffed residence, family home provider, or adult foster care home for SCL services that are provided, in accordance with 907 KAR 1:145, Section 4, to an individual who has transitioned from an institutional setting to a community setting.

(2) The rate established in subsection (1) of this section shall be paid for care to an individual who:

(a) Prior to the transition, expressed, or whose legal guardian expressed, a desire to transition from the facility in which he resided to a community placement; and

(b)1. Prior to the transition, resided in an ICF ID[ICF-MR-DD] for the entire two (2) year period, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the ICF ID[ICF-MR-DD] and who was approved by the department for transitioning;

2. Resided in an ICF ID[ICF-MR-DD] for a period of less than two (2) years but more than six (6) months, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the ICF ID[ICF-MR-DD] and who was approved for transitioning by the department; or

3.a. Transitioned from an institutional setting other than an ICF ID[ICF-MR-DD];

b. Had a primary diagnosis of [~~mental retardation~~] or developmental disability;

c. Had resided in an ICF ID[ICF-MR-DD] for a period of at least six (6) months within the preceding two (2) years;

d. Had received prior SCL funding; and

e. Had been reviewed and approved for transitioning by the department.

(3) To be considered for providing services to an individual meeting the criteria established in subsection (2) of this section, a provider shall:

(a) Demonstrate its ability to ensure that the potential recipient will have access to each service identified in his or her individual support plan through:

1. The provider's own operation; or

2. An established network of providers that are:

a. Enrolled in the Medicaid Program; or

b. Certified or licensed in accordance with state law governing their specific area of practice;

(b) Notify the department in writing:

1. Of the number of individuals it is willing and able to accept;

2. The date it will be able to accept an individual or individuals;

and

3. That it is willing and able to provide services to a minimum of one (1) individual who has scored at least five (5) on the NC-SNAP; and

(c) Be able to serve a minimum of three (3) individuals, regardless of funding source, in the residence. A provider shall not be required to serve a minimum of three (3) individuals referenced in subsection (2) of this section, but shall be able to serve a minimum of three (3) individuals in the residence.

(4) To receive the rate established in subsection (1) of this section, a provider shall submit documentation to the department of each SCL service provided to the recipient for whom the special rate is paid.

(5) The reimbursement established in subsection (1) of this section:

(a) Shall expire if approval from the Centers for Medicare and Medicaid Services ceases and corresponding funding becomes unavailable; and

(b) Shall be all inclusive, meaning that it shall cover residential as well as all other SCL services, in accordance with 907 KAR 1:145, Section 4, provided to the recipient for a year.

(6) Recipient freedom of choice provisions shall apply during an individual's transition from an institution to a group home, staffed residence, family home provider or adult foster care home.

(7) An individual may transition to a group home, staffed residence, family home provider, or adult foster care home if:

(a) The individual is eligible for SCL services pursuant to 907 KAR 1:145;

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(b) The department determines that the group home, staffed residence, family home provider, or adult foster care home satisfies the requirements established in this section; and

(c) The group home, staffed residence, family home provider, or adult foster care home meets the SCL provider requirements established in 907 KAR 1:145.

(8)(a) If a group home, staffed residence, family home provider, or adult foster care home declines to accept an individual referenced in subsection (2) of this section, the provider, except as established in paragraph (b) of this subsection, shall be ineligible to:

1. Provide services to any future individual who meets the criteria established in subsection (2) of this section; and

2. Receive the corresponding rate referenced in subsection (1) of this section for care provided to any future individual.

(b) If the department determines that a provider who declines to accept an individual is not equipped to serve the individual and that the placement would be inappropriate, the provider may be considered for future placements and payments.

(c) Refusing to accept an individual referenced in subsection (2) of this section shall not preclude a provider from continuing to:

1. Serve an individual meeting the criteria established in subsection (2) of this section who is already residing in the provider's residence; or

2. Be reimbursed at the rate established in subsection (1) of this section for services provided to an individual already residing in the provider's residence.

Section 8. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A recipient of an SCL waiver service shall have an NC-SNAP administered:

(a) By the department; and

(b) In accordance with the NC-SNAP Instructor's Manual.

(2) A new NC-SNAP may be administered:

(a) At the department's discretion; or

(b) At the timely request of an SCL provider if a change in a recipient's circumstances results in the need for increased or decreased supportive services.

(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:

(a) In accordance with subsection (2)(b) of this section; or

(b) As a result of an appeal filed in accordance with Section 10 (1) of this administrative regulation.

Section 9. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 10. Transition to New SCL Waiver. (1) The reimbursement policies established in this administrative regulation shall:

(a) Apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 1:145; or

(b) Not apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010.

(2) An SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010 shall be reimbursed pursuant to 907 KAR 12:020.

(3) The policies established in this administrative regulation shall become null and void at the time that:

(a) All SCL waiver service recipients receive SCL waiver services pursuant to 907 KAR 12:010; and

(b) No SCL waiver recipient receives SCL waiver services pursuant to 907 KAR 1:145.

Section 11.~~[Section 10]~~ Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider's reimbursement level.

(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.

(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 12.~~[14:]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-95 Request for Equipment Form", Department for Medicaid Services, September 2002 Edition;

(b) "North Carolina Support Needs Assessment Profile (NC-SNAP)", 2000 Edition, copyright Murdoch Center Foundation; and

(c) "NC-SNAP Instructor's Manual", copyright 1999, Murdoch Center Foundation.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012 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 September 14, 2012 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 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: Sheila Davis (502) 564-5560, Claudia Johnson (502) 564-7702, Karen Martin (502) 564-7540, or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for the current Medicaid Supports for Community Living (SCL) waiver program. The Department for Medicaid Services (DMS) is implementing a new version of the SCL waiver program. Service and coverage policies for the new version will be established in 907 KAR 12:010 and reimbursement policies will be established in 907 KAR 12:020. Individuals will transition from the current SCL waiver program to the new SCL waiver program during the month of the individual's next birthday. The reimbursement policies established in this administrative regulation shall continue to apply to services provided to individuals receiving SCL waiver services under this regulation. At the time that all individuals have transitioned to the new SCL waiver program, this administrative regulation shall become null and void.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the original Medicaid SCL waiver program until individuals receiving services under the original SCL waiver program have transitioned to the new SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that until individuals have transitioned to the new SCL waiver program, the reimbursement policies in this administrative regulation shall continue to apply to SCL waiver services provided to those individuals.

(b) The necessity of the amendment to this administrative regulation: Due to the large number of SCL waiver program recipients – over, 3,500 individuals – DMS is unable to transition everyone to the new SCL waiver program concurrently; therefore, amending this regulation to establish a phased in approach is necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers of SCL services will be affected by the amendment. Currently, there are 202 such providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required by the amendment.

(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 by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will benefit by being reimbursed for services provided.

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(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

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(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? This administrative regulation contains a higher level of reimbursement (Level II) for providers

who serve individuals with more intense needs than the lower reimbursement levels.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

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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 Aging and Independent Living Division of Operations Support (Amendment)

910 KAR 1:240. Certification of assisted-living communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793, 216.595(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

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Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(3) "Assisted-living community" is defined by KRS 194A.700(4).

(4) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(5) "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

(6) "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(7) "Danger" is defined by KRS 194A.700(6).

(8) "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(9) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(10) "Licensed healthcare professional" is defined by KRS 216.300(1).

(11) "Living unit" is defined by KRS 194A.700(10).

(12) "Plan of correction" is defined by KRS 194A.700(12).

(13) "Statement of danger" is defined by KRS 194A.700(13).

(14) "Statement of noncompliance" is defined by KRS 194A.700(14).

(15) "Temporary condition" means a condition that affects a client as follows:

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

(b) 1. The client loses mobility after entering a lease agreement;

2. The client is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:

(a) Calculating the fee for a year by computing twenty (20) dollars per living unit or the \$300 minimum set forth in KRS 194A.707(8), whichever is greater, but no more than the \$1,600 maximum set forth in KRS 194A.707(8);

(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee; and

(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee required by Section 2(1)(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a),(b), and (c) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit prorated in accordance with Section 2(2) of this administrative regulation.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community.

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(1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from the date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. Completion of employee orientation:

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(c) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(d) Review of client records including:

1. A completed client functional needs assessment:

a. To ensure that the client met the eligibility requirements for assisted-living pursuant to KRS 194A.705(5); and

b. In which a copy was provided to the client upon move in pursuant to KRS 194A.705(5)(a);

2. An initial and at least annual functional needs assessment:

a. That reflects a client's ability pursuant to KRS 194A.705(5) to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current personal preferences and social factors;

4. A signed lease with all attachments;

5. Documentation of a client's designated representative, if applicable; and

6. Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d);

(e) Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(f) Review of an assisted-living community's written service provision and practices related to:

1. Provisions of KRS 194A.705 which, in the case of medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but not exceed the following staff actions if the client requests assistance:

a. Providing the client with a medication reminder;

b. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

c. Opening the medication container or dosage package, but not handling or removing the medication;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that

may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's abilities as specified in paragraph (d)2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

5. Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation; and

(g) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).

(3) The department may, pursuant to KRS 194A.707(10), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Waiver of Building Requirements. (1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(2) The department shall:

(a) Review, approve, or deny the waiver request on a case-by-case basis; and

(b) Not waive the building and life safety codes established in KRS 194A.703(3).

(3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 12[44] of this administrative regulation if:

1. An informal dispute is not requested; or
2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10[9](2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10).

Section 10.[9-] Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9[8](2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and
2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section (9)[8](9) of this administrative regulation:

1. Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

- a. Email;
- b. Facsimile transmission;
- c. Delivery to the department by hand;
- d. United States mail; or
- e. Courier service; or

2. Within forty eight (48), unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

- (i) Email;
- (ii) Facsimile transmission;
- (iii) Delivery to the department by hand;
- (iv) United States mail; or
- (v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 12[44] of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12[44] of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

(b) The fine shall be paid as specified in Section 11[40](1) of this administrative regulation.

Section 11.[40-] Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to KRS 194A.724 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be \$250.

Section 12.[44-] Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

- (a) Nonapproval of the amended plan of correction; or
- (b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 13.[42:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", edition 7/10;

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", edition 7/12[7/40];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", edition 2/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: August 14, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2012, at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2012, 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 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 October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jill Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for certification of assisted-living communities.

(b) The necessity of this administrative regulation: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies

with KRS 194A.050(1) which states the secretary shall promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation provides an initial and annual certification review process for assisted-living communities pursuant to KRS 194.707(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

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

(a) How the amendment will change this existing administrative regulation: The amendment implements the provisions of KRS 216.595(3), SB 115 of the 2012 General Assembly.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be in compliance with KRS 215.595(3), SB 115 of the 2012 General Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statute KRS 194A.707(1) which requires the Cabinet to establish an initial and annual certification review process. The amendment implements a certification review for the Department's approved waiver of building requirements established in KRS 194A.703(1) and (2).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the changes to KRS 216.595(3) of the 2012 General Assembly which establishes that the Cabinet may waive building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 94 assisted-living communities throughout the state and the Department for Aging and Independent Living affected by this 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: An assisted-living community may request a waiver for the building requirements established in KRS 194A.703(1) and (2). The Department will review, approve, or deny the request based on the specialized needs of a resident in an assisted-living community who has Alzheimer's disease or other brain disorders.

(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 to assisted-living communities or the Department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More clients may be served under the waiver process.

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

(a) Initially: FY 12 - \$201,020.87.

(b) On a continuing basis: FY 13 - \$201,020.87 approximately

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds from certification fees of \$107,362.24 and additional general funds necessary to operate the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees in this administrative regulation are governed by KRS 194A.707(6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes certification fees within the provisions found in KRS 194.707(6).

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are approximately 94 assisted-living communities throughout the state and the Department for Aging and Independent Living affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.700 – 729, 216.595(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment will not generate additional revenue or an increase in costs in expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment 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 amendment, itself, will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? FY 12- \$201,020.87.

(d) How much will it cost to administer this program for subsequent years? FY 13- \$201,020.87.

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:

NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:350. Home medical equipment service providers.

RELATES TO: KRS 315.512, 315.514, 315.518, 314.520

STATUTORY AUTHORITY: KRS 315.191, 315.518(1), (4), 315.520(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191 authorizes the Board of Pharmacy to promulgate administrative regulations governing home medical equipment and service providers. This administrative regulation establishes the minimum requirements for the licensing of a home medical equipment service provider.

Section 1. General Requirements. (1) A home medical equipment company engaged in providing services in the Commonwealth shall apply for a license from the board in accordance with KRS 315.518 and this administrative regulation.

(2) An agent or employee of a licensee shall not be required to obtain a license if the agent or employee is acting in the usual course of business or employment.

(3) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature, and humidity control, sanitation, space, and security;

(b) Establishing and providing records of annual continuing education for personnel engaged in the delivery, maintenance, repair, cleaning, inventory control, and financial management of home medical equipment and services; and

(c) Providing accurate and precise records of all goods shipped or received including source of receipt, date, quantity, itemized description, and any other information pertinent to the transaction.

(4) An applicant for a home medical equipment license shall prepare and adopt a policy and procedure manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensees will maintain the premises so that the home medical equipment remains secure.

Section 3. Sanitation and Safety Requirements. (1) An applicant for a home medical equipment license located in the Commonwealth of Kentucky shall be inspected by the board prior to the issuance of the license.

(2)(a) The designated business area shall be used exclusively for the sale, rental, and distribution of home medical equipment.

(b) Repairs and cleaning shall be done in a confined, properly ventilated area.

(c) All areas shall be adequately lighted and all areas kept in a clean and sanitary manner.

(3) A home medical equipment supplier shall comply with the maintenance and cleaning requirements established in this subsection. A home medical equipment supplier shall:

(a) Maintain documents demonstrating that a function and safety check of equipment was performed prior to set up;

(b) Maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;

(c) Maintain a Material Safety Data Sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;

(d) Maintain segregated areas on the premises and in delivery vehicles for clean, dirty, and contaminated equipment;

(e) Clean and disinfect equipment according to manufacturer's specifications;

(f) Instruct the patient on proper cleaning techniques as speci-

fied by the manufacturer; and

(g) Perform routine inspection, service, and maintenance of equipment located in the patient's or customer's home according to manufacturers' specifications.

(4) The supplier's services shall be available twenty-four (24) hours, seven (7) days per week if it is essential to the maintenance of life or lack of service might reasonably cause harm.

(5) The supplier shall:

(a) Demonstrate that each piece of equipment has been checked, is free of defects, and operates within the manufacturer's specifications;

(b) Maintain documentation, which shall include the following:

1. The type of equipment;

2. The manufacturer;

3. The model number;

4. The serial number;

5. The date of repair;

6. The specific repair made; and

7. The name of the person or company performing the repair;

(c) Refrain from modifying equipment to the extent that the modification might reasonably cause harm;

(d) Maintain all electrical components so that they do not present fire or shock hazard;

(e) Ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided;

(f) Document all equipment serial numbers and model numbers to ensure that equipment can be retrieved if a recall is initiated; and

(g) Affix an identifying label that contains the name of the provider, address, and phone number.

(6) The supplier shall implement and maintain a written procedure at each location for handling complaints and problems. The procedure shall include a complaint file documenting complaints and problems and resolution of the complaints and problems.

Section 4. License Fee; Renewals. (1) A home medical equipment and services provider shall be licensed by the board prior to engaging in providing home medical equipment and services in the Commonwealth.

(2) An applicant shall submit:

(a)1. A completed Application for Home Medical Equipment License; and

2. The initial application fee established by 201 KAR 2:050, Section 1(21); or

(b)1. A completed Application for Home Medical Equipment License Renewal; and

2. The renewal application fee established by 201 KAR 2:050, Section 1(22).

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

(a) "Application for Home Medical Equipment License", Form 1, 07/2012; and

(b) "Application for Home Medical Equipment License Renewal", Form 2, 07/2012.

(2) This form may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 20, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday September 27, 2012 at 11:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday October 1, 2012 at 4:30 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows a home medical equipment provider to be licensed if the applicant meets the requirements of this administrative regulation.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with HB 282.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations that establishes the requirements for a home medical equipment provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a home medical equipment provider to obtain a license.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than 500 home medical equipment providers annually will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will be able to obtain a home medical equipment license to provide home medical equipment to patients in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will be required to pay a fee of \$200 for initial licensure and a renewal fee of \$200 annually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Home medical equipment providers will be able to be licensed to provide home medical equipment to patients in the Commonwealth.

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

(a) Initially: Unknown: there will be cost of completing inspections by the board inspectors (time and travel) and cost of board attorney in review and prosecuting cases of home medical equipment providers.

(b) On a continuing basis: Unknown: there will be costs of completing inspections and cost of board attorney in review and prosecuting cases of home medical equipment providers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funds for implementation and enforcement will come from the fees collected for the initial application fee and annual renewal fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for initial licensure and annual renewals.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to home medical equipment provider.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2012 RS HB 282 and KRS 315.191 requires or authorizes the action taken by this administrative regulation.

3. 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? \$80,000.

(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? \$80,000

(c) How much will it cost to administer this program for the first year? Unknown

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

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

Revenues (+/-): The Board anticipates yearly revenue of \$80,000 (400 applicants x \$200)

Expenditures (+/-): The Board inspectors will be required to inspect the home medical equipment facilities and there will be travel costs; software upgrade, and board attorney fees for prosecuting complaints against home medical equipment providers.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Optometric Examiners (New Administrative Regulation)

201 KAR 5:130. Controlled substances.

RELATES TO: KRS 218A.205(3)

STATUTORY AUTHORITY: KRS 218A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3) requires the board to promulgate administrative regulations on: prescribing standards for controlled substances; a procedure to temporarily suspend, limit, or restrict a license if unrestricted practice poses a danger to the health, welfare, or safety of patients or the public; a procedure for the expedited review of complaints pertaining to controlled substances; and penalties for convictions of offenses related to controlled substances. This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

Section 1. Prescribing Standards. (1) A Kentucky licensed optometrist authorized to prescribe controlled substances for hu-

mans shall:

- (a) Have a current and valid DEA number;
 - (b) Register with Kentucky All Schedule Prescription Electronic Reporting (KASPER);
 - (c) Prescribe controlled substances only for the treatment or relief of pain for a condition of the eye and its appendages;
 - (d) Prescribe only Schedule III, IV, or V controlled substances;
 - (e) Prescribe controlled substances for a quantity therapeutically sufficient, up to seventy-two (72) hours;
 - (f) Examine the patient face-to-face and in-person prior to prescribing a controlled substance;
 - (g) Verify the fact that the patient that is prescribed a controlled substance is who the patient claims to be;
 - (h) Establish a documented diagnosis through the use of accepted medical practices; and
 - (i) Keep accurate, readily accessible medical records which shall include:
 1. History and eye examination;
 2. Diagnostic, therapeutic, and laboratory results;
 3. Evaluations and consultations;
 4. Treatment objectives;
 5. Discussions of risk, benefits, and limitations of treatments;
 6. Treatments;
 7. Medication including date, type, dosage, and quantity prescribed; and
 8. Instructions and agreements.
- (2) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall not:
- (a) Dispense any controlled substances;
 - (b) Write a prescription for a controlled substance that is refillable; and
 - (c) Prescribe:
 1. With the intent or knowledge that a medication will be used, or is likely to be used, for other than a medicinal or an accepted therapeutic purpose; or
 2. With the intent to evade any law with respect to sale, use, or disposition of the medication.

Section 2. Temporary Suspension, Limit, or Restriction of License. (1) The board may, without benefit of a hearing, temporarily suspend, limit, or restrict the license of an optometrist authorized to prescribe controlled substances if the board finds on the basis of reasonable evidence that the licensee has violated a statute or administrative regulation the board is empowered to enforce, and continued unrestricted practice by the licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public.

(2) The temporary suspension, limit, or restriction of a license shall take effect upon receipt by the licensee of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the temporary suspension, limit, or restriction order issues, the board shall schedule a disciplinary hearing to be held in accordance with the provisions of KRS Chapter 13B within ten (10) days.

Section 3. Complaints. (1) The board shall consider all written complaints and sufficient anonymous complaints pertaining to the improper, inappropriate, or illegal prescribing of controlled substances. An anonymous complaint shall be considered sufficient if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(2) Upon receipt of a complaint pertaining to the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

- (a) Send a copy of the complaint to the Office of the Attorney General, the Department of the Kentucky State Police, and the Cabinet for Health and Family Services within three (3) business days;
- (b) Commence an investigation within seven (7) business days of the complaint; and
- (c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in

writing by a law enforcement agency due to an ongoing criminal investigation.

Section 4. Penalties. (1) Pursuant to the provisions of KRS 218A.205(3):

(a) A licensee convicted of a felony offense related to prescribing a controlled substance shall, at a minimum, have a lifetime revocation on prescribing any and all controlled substances;

(b) The board shall impose restrictions short of a permanent ban from prescribing controlled substances on a licensee convicted of a misdemeanor offense related to the prescribing of controlled substances. A licensee who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; and

(c) A licensee disciplined by a licensing board of another state related to the improper, inappropriate, or illegal prescribing of controlled substances shall, at a minimum, have the same disciplinary action imposed by the licensing board of the other state.

(2) A licensee who is authorized to prescribe controlled substances shall be subject to discipline by the board if:

(a) A licensee who is required to register for an account with KASPER fails to do so or does not maintain continuous registration during the licensee's term of licensure; or

(b) A licensee or applicant fails to report to the board, within thirty (30) days of the action:

1. Any conviction involving controlled substances; or
2. Disciplinary action taken by another licensure board involving controlled substances.

(3) Pursuant to the provisions of KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

JERALD COMBS, President

APPROVED BY AGENCY: July 17, 2012

FILED WITH LRC: July 20, 2012 at 11a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2012 at 10:00 a.m. at the Embassy Suites, 1801 Newtown Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on September 21, 2012, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507; phone (859) 246-2744; fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards, an emergency suspension provision, a complaint process, and penalties with respect to an optometrist who has been convicted of an offense involving controlled substances.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the mandates of HB1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes procedures

mandated by HB1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: HB1 requires the Board to promulgate specific administrative regulations which will aid in detecting and curtailing abuse of controlled substances that are prescribed or dispensed.

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

(a) How the amendment will change this existing administrative regulation: Not applicable since this is a new regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since 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: The board anticipates that approximately 415 optometrists will be authorized to prescribe controlled substances and subject to the requirements of this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All licensees that prescribe controlled substances will be subject to the standards enumerated in the administrative regulation. Complaints involving controlled substances shall be reported to other agencies, investigated within 7 days of receipt, and charging decisions shall be forthcoming within 120 days, unless appropriately continued. The Board shall have the power to temporarily suspend licenses when continued practice poses a threat of harm to the public. Licensees will have to disclose violations of controlled substance laws or risk discipline. Certain violations of law will carry specific consequences (e.g. lifetime ban on prescribing if a licensee is convicted of a felony controlled substance prescribing offense).

(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 monetary cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will alleviate the threat of discipline by the Board.

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

(a) Initially: The cost of investigations, meeting dates, and hearings will be incurred by the Board. While the costs are impossible to accurately predict, the Board estimates an additional expense of \$10,000 annually.

(b) On a continuing basis: While the costs are impossible to accurately predict, the Board estimates an additional expense of \$10,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Primarily, license application and renewal fees fund the work of the Board. The Board is self sustaining and receives no general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this new administrative regulation is not dependent on an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees who are authorized to prescribe controlled substances.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB1 requires the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board anticipates an annual expenditure of \$10,000 and no revenue for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The Board estimates it will cost \$10,000 annually to meet, investigate complaints, and conduct hearings.

(d) How much will it cost to administer this program for subsequent years? The Board estimates it will cost \$10,000 annually to meet, investigate complaints, and conduct hearings.

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 Medical Licensure (New Administrative Regulation)

201 KAR 9:001. Definitions for terms used in KRS 218A.172.

RELATES TO: KRS 218A.172, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the definitions for terms used in KRS 218A.172.

Section 1. Definitions. The following terms used in KRS 218A.172 are defined in the following manner:

(1) "Query the electronic monitoring system" means, in the setting of a licensed hospital, long term care facility or surgical center:

(a) The admitting physician, admitting the patient for observation, inpatient or outpatient purposes, obtaining and reviewing the KASPER immediately prior or promptly after the patient's admission to the hospital;

(b) The admitting physician placing the KASPER report into the patient chart for use by all practitioners in the hospital for that patient during that specific admission;

(c) Each practitioner reviewing the KASPER report in the patient chart before prescribing controlled substances during the course of that specific admission; and

(d) The discharging practitioner reviewing the KASPER report in the patient chart before prescribing controlled substances for up to seventy-two (72) hours upon the patient's discharge from the hospital.

(2) "During surgery" means the seventy-two (72) hour period

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immediately following surgery if the controlled substance is prescribed or the forty-eight (48) hour period immediately following surgery if the controlled substance is dispensed for the treatment of pain resulting from the surgery, whether the surgery is performed on an inpatient or outpatient basis.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 2:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for terms used in KRS 218A.172.

(b) The necessity of this administrative regulation: It is necessary to establish the definitions for terms used in KRS 218A.172.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the definitions for terms used in KRS 218A.172.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the definitions for terms used in KRS 218A.172.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect all physicians licensed in the Commonwealth of Kentucky that prescribe controlled substances.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Physicians will not have to take any required action to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Board of Medical Licensure will not charge a

fee for compliance with regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will have definitions for the terms used in KRS 218A.172.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.172.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Administrative Regulation)

201 KAR 9:200. National Practitioner Data Bank Reports.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a), (k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 311.595(1)(k) authorizes the board to utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620. This administrative regulation establishes the requirements of obtaining and reporting information to the National Practitioner Data Bank.

Section 1. (1) The board shall obtain a report from the National Practitioner Data Bank, which includes all available information, on each applicant for initial licensing within the Commonwealth of

Kentucky. The board shall not grant an initial license to practice medicine or osteopathy within the Commonwealth unless and until it has received and reviewed the National Practitioner Data Bank report for that applicant.

(2) The board shall promptly report each order issued by its panels, whether final order or agreed order, relating to a specific licensee to the National Practitioner Data Bank in accordance with rules and regulations published by the United States Department of Health and Human Services, Health Resources and Services Administration.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 10:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of obtaining and reporting information to the National Practitioner Data Bank.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to comply with the requirements of 218A.205.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements of obtaining and reporting information to the National Practitioner Data Bank.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements of obtaining and reporting information to the National Practitioner Data Bank.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect new applicants along with approximately 15,500 physicians already licensed to practice medicine in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for initial licensure will be required to obtain the National Practitioner Data Bank report prior to being licensed to practice medicine or osteopathy in the Commonwealth of Kentucky. Current licensees will not be required to take any action to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of obtaining the National Practitioner Data Bank Report for initial applicants is \$16 payable directly to the National Practitioner Data Bank. There will be no cost to current licensees as the Board will report directly to the National Practitioner Data Bank.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be able to provide accurate information to the Board as required for licensure. Current licensees will have the benefit of accurate information being reported to the National Practitioner Data Bank.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), (k); 218A.205.

(3) 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:

VOLUME 39, NUMBER 3 – SEPTEMBER 1, 2012

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)**

201 KAR 9:210. Criminal background checks required for all new applicants.

RELATES TO: KRS 311.530-311.620, 311.990, 218A.205
STATUTORY AUTHORITY: KRS 311.565(1)(k), (t)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(t) authorizes the board to require a criminal background investigation of all persons applying for licensure at the time of initial application by means of a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation. This administrative regulation establishes the requirement for criminal background checks for all new applicants.

Section 1. The board shall require a criminal background investigation, by means of a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation, of all persons applying for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky. The board shall not grant an initial license to practice medicine or osteopathy within the Commonwealth until it has received and reviewed the criminal background investigations by both the Department of Kentucky State Police and the Federal Bureau of Investigation for that applicant.

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY: July 20, 2012
FILED WITH LRC: July 20, 2012 at 2 p.m.
CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation requires criminal background checks for all new applicants.
 - (b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to require criminal background checks for all new applicants to be conducted prior to receiving a license to practice medicine or osteopathy in the Commonwealth of Kentucky.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to require criminal background checks for all new applicants.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to require criminal background checks for all new applicants.
- (2) If this is an amendment to an existing regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation; Not Applicable.
 - (b) The necessity of the amendment to this administrative regulation; Not Applicable.
 - (c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.
 - (d) How the amendment will assist in the effective administration of the statutes. Not Applicable.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect approximately 1,000 applicants for initial licensure in the Commonwealth of Kentucky each year.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 be required to submit to a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will be required to send a check payable to the Kentucky State Treasurer in the amount of \$36.50 to the Department of the Kentucky State Police.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant may be approved to practice medicine or osteopathy in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(k)(t), 218A.205.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)**

201 KAR 9:220. Restriction upon dispensing of Schedule II controlled substances and Schedule III substances containing Hydrocodone.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative

regulations to regulate the conduct of licensees. KRS 311.595(9) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes a restriction governing dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

Section 1. (1) No physician licensed in Kentucky shall dispense an amount greater than a forty-eight (48) hour supply of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to any patient, unless the dispensing is done as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services.

(2) A physician licensed in Kentucky shall not act to avoid the limitation upon dispensing set out in subsection (1) of this section by dispensing Schedule II controlled substances or Schedule III controlled substances containing hydrocodone to a patient on consecutive or multiple occasions.

(3) Any violation of this section shall be considered a violation of KRS 311.595(12) and of 311.595(9), as illustrated by KRS 311.597(1)(b), and shall constitute a legal basis for disciplinary action pursuant to KRS 311.595.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 20, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish a restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically establish a restriction upon the dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish a restriction upon the dispensing of Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

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

(a) How the amendment will change this existing administrative

regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all physicians in the Commonwealth of Kentucky that prescribe Schedule II controlled substances and Schedule III controlled substances containing hydrocodone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required on the part of the affected physicians.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to regulated entities associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)**

201 KAR 9:230. Required Registration in the KASPER System; Legal Requirements for Prescribing Controlled Substances in the Commonwealth of Kentucky; Enforcement.

RELATES TO: KRS 311.530-311.620, 311.990, 218A.202

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. KRS 311.595(9) and (12) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.

Section 1. (1) Effective July 20, 2012, every licensee who holds a valid Drug Enforcement Administration (DEA) permit to prescribe or dispense controlled substances to humans in the Commonwealth of Kentucky must be registered with the Cabinet for Health and Family Services to use the KASPER system.

(2) Any licensee who obtains a DEA permit to prescribe or dispense controlled substances to humans in the Commonwealth of Kentucky following July 20, 2012 shall register, within three (3) working days of the date of issuance of the DEA permit, with the Cabinet for Health and Family Services to use the KASPER system.

(3) Every licensee who holds a valid DEA permit to prescribe or dispense controlled substances to humans in the Commonwealth of Kentucky shall maintain registration with the Cabinet for Health and Family Services to use the KASPER system continuously during their licensure within the Commonwealth of Kentucky.

(4) Failure of a licensee to register with the Cabinet for Health and Family Services to use the KASPER system within the time designated or to maintain such registration continuously during their licensure, as required by subsections (1) to (3) of this section shall constitute violations of KRS 311.595(9) and (12) and shall provide a basis for disciplinary action against their Kentucky licenses pursuant to KRS 311.595.

Section 2. (1) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee must hold a valid DEA permit to do so and must be registered with the Cabinet for Health and Family Services to use the KASPER system.

(2) Failure to be registered with the Cabinet for Health and Family Services to use the KASPER system at any time while the licensee holds a valid DEA permit to prescribe or dispense controlled substances to humans within the Commonwealth of Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(3) If the board receives documentation from the Cabinet for Health and Family Services that a licensee holds a valid DEA permit to prescribe or dispense controlled substances to humans within the Commonwealth of Kentucky, but is not currently registered with the Cabinet to use the KASPER system, the board shall:

(a) Immediately send written notice, by certified mail, to the physician that the physician must register with the Cabinet for Health and Family Services to use the KASPER system within seven (7) days of receipt of the written notice;

(b) Confirm with the Cabinet for Health and Family Services that the physician registered with the cabinet to use the KASPER system; and

(c) If the physician failed to register with the Cabinet for Health and Family Services to use the KASPER system within the seven (7) days following receipt of the written notice, the appropriate Inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until such time

as the licensee has registered with the cabinet to use the KASPER system.

(4) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to subsection (3) of this section shall remain valid and in effect until the board has received written verification from the cabinet that the licensee has registered with the cabinet to use the KASPER system. Upon receipt of such written verification, the panel or its chair will immediately issue an order terminating the emergency order issued pursuant to this section;

(5) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order of restriction if presented with a written notification on cabinet letterhead stating that the affected licensee holds a valid DEA permit but is not registered with the cabinet to use the KASPER system.

Section 3. If a licensee should prescribe or dispense controlled substances within the Commonwealth of Kentucky during any period when the licensee is not registered with the cabinet to use the KASPER system, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and will serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 10:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for required registration in the KASPER system and provides for enforcement by the Board.

(b) The necessity of this administrative regulation: It is necessary to establish the requirements for registration in the KASPER system and to provide for enforcement by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for required registration in the KASPER system and to provide for enforcement by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish requirements for registration in the KASPER system and provides for enforcement by the board.

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

(a) How the amendment will change this existing administrative

regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect all physicians licensed in the Commonwealth of Kentucky that hold a valid DEA permit to prescribe controlled substances.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 physician that holds a valid DEA permit to prescribe or dispense controlled substances in the Commonwealth of Kentucky must register with the Cabinet for Health and Family Services to use the KASPER system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Board of Medical Licensure will not charge a fee for compliance with regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will be able to monitor patients who are prescribed controlled substances in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.202.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Administrative Regulation)

201 KAR 9:240. Emergency orders and hearings; appeals and other proceedings.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. The purpose of this administrative regulation is to set for the procedure to be followed in handling emergency proceedings before the board.

Section 1. Authority to Issue Emergency Order; Timing. (1) An inquiry panel or the panel's chair, acting on behalf of the inquiry panel, may issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky whenever the inquiry panel or the panel's chair has probable cause to believe that:

(a) The physician has violated one (1) or more terms of an agreed order entered into between the physician and one (1) of the board's panels, or has violated one (1) or more terms of a disciplinary order issued by one (1) of the board's hearing panels; or

(b) The physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

(2) The inquiry panel will normally make such determination when it considers a completed investigation pursuant to KRS 311.591(3) at a regularly scheduled meeting of the inquiry panel.

(3) An inquiry panel's chair may act on behalf of the inquiry panel and issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky when the panel chair determines that a ground for emergency order delineated in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the inquiry panel. If an emergency hearing is scheduled prior to the next regularly scheduled meeting of the inquiry panel, the panel chair may also act on behalf of the inquiry panel and issue the complaint required to support the continuation of the emergency order. Whenever the panel chair acts on behalf of the inquiry panel pursuant to this subsection, the panel chair shall report such actions to the inquiry panel at its next regularly scheduled meeting.

Section 2. Findings of Fact and Conclusions of Law. (1) The inquiry panel, or the panel chair acting on the panel's behalf, may consider any evidence or information normally considered by the board's inquiry panels in making charging decisions pursuant to KRS 311.591(3) in making the determination whether to issue an emergency order pursuant to Section 1 of this administrative regulation. Such evidence or information may include:

(a) Applications for licensing or renewal filed by the physician with this or any other licensing board;

(b) Any prior or current order issued by the board or one (1) of its panels affecting the physician's Kentucky license;

(c) Any prior or current order issued by another state's licensing authority affecting the physician's license in that state;

(d) The records of any criminal proceeding involving the physician;

(e) A report by or record of any governmental agency, including law enforcement agencies, and including Kentucky All Schedule Prescription Electronic Reporting (KASPER) reports or summaries or of references to such reports;

(f) Patient records maintained by the physician, or summaries of or references to the contents of such records;

(g) Records or reports issued or maintained by pharmacies;

(h) Records or reports issued or maintained by hospitals, in-

cluding peer review reports relating to the physician and medical records of patients treated by the physician in the hospital;

(i) Records or reports issued or maintained by any business;

(j) Investigative reports prepared by the board's investigators, including summaries of verbal or written statements by witnesses and summaries of evidentiary documents reviewed by the investigators;

(k) Investigative reports prepared by the board's investigators involving other investigations conducted by the board relating to the physician;

(l) Oral or written statements by the physician, or the physician's agent, relating to the investigation;

(m) Reports of clinical assessments relating to the physician, including reports by the Center for Personalized Education for Physicians (CPEP), Denver, Colorado;

(n) Physical or mental evaluations or assessments of the physician;

(o) Written reports of patient record reviews conducted by a consultant under contract with the board to perform such reviews;

(p) Written reports of patient record reviews conducted by a licensed physician performing such review on behalf of the physician.

(2) The evidence or information considered by the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall constitute the board's record of proceedings relating to the issuance of an emergency order of restriction or suspension.

(3) If the inquiry panel or the panel chair, acting on behalf of the inquiry panel, issues an emergency order of restriction or suspension against a physician's license, the emergency order shall be a written order and shall include findings of fact and conclusions of law, supported by the board's record of proceedings, upon which the agency bases the emergency order.

(4) Any emergency order issued by the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall be served upon the affected physician in the manner specified in KRS 13B.050(2). The emergency order shall become effective immediately upon receipt by the affected physician or the physician's representative.

Section 3. Authority to Issue Emergency Order of Suspension Upon Felony Indictment. (1) If a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to controlled substances, that licensee's practice shall be considered an immediate danger to the public health, safety or welfare pursuant to KRS 311.592 and 13B.125.

(2) If the board receives verifiable information that a licensee has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to controlled substances, the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall immediately issue an emergency order suspending that licensee's Kentucky license.

(3) The emergency order of suspension shall remain in effect until such time as the criminal charges contained in the indictment are finally resolved and the board's hearing panel has finally resolved the matter after receipt of the court documents finally resolving the criminal charges in the indictment.

(4) If the affected physician should request an emergency hearing, the hearing officer shall affirm the emergency order of suspension if presented with a certified copy of the indictment.

Section 4. Request for and Timing of Emergency Hearing; Waiver. (1) A physician required to comply with an emergency order issued by an inquiry panel or panel chair, acting on behalf of an inquiry panel, may request an emergency hearing at any time between the effective date of the emergency order and the effective date of an order finally resolving the underlying complaint.

(2) Any request for an emergency hearing must be presented to the board in writing, but may be submitted by facsimile or email. Upon receipt of a written request for an emergency hearing, the board shall schedule the emergency hearing on one (1) of the ten (10) working days following the date of receipt of the written request; the day on which the written request is received by the board shall not be considered one (1) of the ten (10) working days specified in the statute's requirement. A written request will be considered received on a particular work day if it is received by the

board during the board's scheduled operating hours for that day. If the board receives a request for emergency hearing by facsimile or email received after scheduled operating hours, the request will be considered to have been received the next scheduled work day of the board.

(3) A written request for emergency hearing shall be considered a certification by the affected physician and the physician's counsel, if any, that the physician is available to participate in an emergency hearing on any of the ten (10) working days following the date of the board's receipt of the written request for emergency hearing. The refusal of the physician to accept a hearing date on a date specified by the board within the ten (10) working days allotted to the board by statute to conduct the emergency hearing shall constitute a waiver of the requirement of KRS 13B.125(3) to conduct the emergency hearing within ten (10) working days of receipt of a request. If there is a waiver of the ten (10) working day requirement of the statute, the hearing officer and parties will schedule the emergency hearing to commence at the next date available to the hearing officer and both parties.

(4) Unless there is a waiver of the requirement, the board must commence the emergency hearing within ten (10) working days of receipt of the written request for emergency hearing. If the parties are unable to conclude the emergency hearing on the initial date assigned, the emergency hearing will resume on the next date available to the hearing officer and both parties and shall continue on dates available to the hearing officer and both parties until concluded.

Section 5. Scope and Conduct of Emergency Hearing; Hearing Officer's Role. (1) The emergency hearing may be conducted by the inquiry panel or its panel chair, acting on behalf of the inquiry panel, or by a qualified hearing officer appointed by the board's executive director.

(2) The singular function of the party conducting the emergency hearing is to determine whether the findings of fact providing the bases for the emergency order are supported by substantial evidence and, if so, constitute one (1) or more violations of KRS 311.595.

(3) Given the ten (10) working day requirement of KRS 13B.125(3) and the unique nature of the hearing, it is not practicable pursuant to KRS 13B.125(3) to conduct the emergency hearing in conformity with the provisions of KRS 13B.050; 13B.060; 13B.070; 13B.080(2), 13B.080(3){as it relates to discovery orders} or (4){to the extent it conflicts with this regulation}; or KRS 13B.090(1){to the extent it prohibits consideration of hearsay evidence}, (2){other than the requirement that all testimony shall be made under oath or affirmation}, (3) or (7); KRS 13B.110 or 13B.120.

(4) There shall be no motion practice, prior to or as part of the emergency hearing, relating to the legality or validity of the emergency order under consideration or relating to evidentiary issues.

(5) As the agency specifically charged by statute with the regulation of the practice of medicine and osteopathy within the Commonwealth of Kentucky, the board has determined the standards of acceptable and prevailing practice within the Commonwealth may be determined by an expert review of a physician's patient records by a qualified expert. The board has also determined that it is professionally appropriate for such expert reviews to be conducted on the board's behalf by licensed physicians who have entered into a contractual relationship with the board to serve as board consultants. By entering into contractual relationships with such licensed physicians, the board has determined that such physicians are legally qualified to provide expert opinions regarding the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky and to provide expert opinions as to whether the affected physician has violated those standards or committed other professional violations of the board's statutes. Pursuant to KRS 13B.090(5), the hearing officer conducting the emergency hearing shall take official notice that the findings and opinions within the contractual reviewer's report are technical or scientific facts within the board's specialized knowledge, shall accept the board's determination that its contractual reviewers meet the legal qualifications to render such expert opinions and shall recognize that the inquiry panel or panel chair, acting on the panel's behalf, may con-

sider and accept those opinions rendered as part of a contractual review of the physician's practice. The party conducting the emergency hearing shall not conduct a separate hearing or inquiry into the qualifications of the contractual reviewer who performed the record review on behalf of the board or of a licensed physician who performed a record review on behalf of the affected physician.

(6) The emergency hearing shall be conducted in the following manner:

(a) The board shall produce and the hearing officer shall accept the record of the proceedings relating to the issuance of an emergency order under consideration;

(b) The board shall not be required to produce any further evidence to support the emergency order. However, the board may call the affected physician to testify, as if under cross-examination, regarding the factual accuracy of evidence or information cited in the record of proceedings relating to the issuance of the emergency order. Refusal of the affected physician to answer the board's questions relating to the factual accuracy of evidence or information cited in the record of proceedings relating to the issuance of the emergency order, for any reason, shall be considered an interference with the board's ability to establish the factual accuracy of the evidence or information and a rescission of the physician's request for emergency hearing;

(c) The affected physician may testify, may produce factual evidence, produce hearsay evidence through documents, or call lay witnesses to the extent that such evidence specifically tends to demonstrate that a factual statement relied upon by the board's contractual reviewer or by the inquiry panel or panel chair, acting on behalf of the inquiry panel, is factually incorrect or false;

(d) The affected physician may only call the board's contractual reviewer for the purpose of cross-examination if the hearing officer determines on the record that the physician's evidence has established that one or more factual statements relied upon by the contractual reviewer in their expert report is demonstrably false or incorrect. If the hearing officer makes such a determination, the affected party may call the board's contractual reviewer for the purpose of cross-examination under the following conditions:

1. The cross-examination of the board's contractual reviewer will be scheduled at the earliest date available to the reviewer and the parties so long as such scheduling does not disrupt the normal operation of the reviewer's professional practice and does not disrupt the care of the reviewer's normal patients;

2. The affected physician shall reimburse the contractual reviewer for the time spent testifying at the emergency hearing, at the rate normally paid the reviewer by the board, and shall tender the expected reimbursement to the reviewer prior to the reviewer's appearance at the emergency hearing;

3. The cross-examination of the board's contractual reviewer shall be limited to factual statements and opinions rendered in the reviewer's report, and the effect upon such opinions of a determination that one or more underlying factual statements relied upon by the reviewer is false or factually incorrect;

4. Upon completion of the cross-examination, the board and the hearing officer may ask questions of the contractual reviewer relevant to the cross-examination.

(7)(a) Within five (5) working days of completion of the emergency hearing, the hearing officer shall issue a written decision in which the hearing officer shall:

1. Affirm the emergency order if there is substantial evidence of a violation of law and the inquiry panel has determined that the violation(s) involved constitutes an immediate danger to the public health, safety, or welfare. If there is substantial evidence of a violation of law, the hearing officer shall not substitute his or her judgment as to the level of public protection necessary for the emergency order;

2. Revoke the emergency order only if there is no substantial evidence of a violation of law. The findings of fact shall be found to be supported by substantial evidence if there is a factual basis for the findings, even if there is a conflict in the evidence or information considered by the inquiry panel or panel chair, acting on behalf of the inquiry panel. A finding that there is no substantial evidence to support the findings of fact would require a finding that there is a complete absence of factual basis for the findings; or

3. Modify the emergency order only if the emergency order

relied upon multiple violations of law and the hearing officer has determined that there is no substantial evidence to support one (1) or more of those violations. In that event, the hearing officer may consider the remaining violation(s) for which there is substantial evidence and may modify the level of protection so long as the modified protection fully protects the public health, safety or welfare based upon the dangers presented by the licensee's commission of the remaining violation(s).

(b) The hearing officer shall not include additional findings of fact or conclusions of law in any written decision affirming the emergency order under consideration. The written decision shall be sufficient if it determines that there was substantial evidence of a violation of law and the panel had determined that the violation constituted an immediate danger to the public health, safety or welfare.

(c) If the hearing officer should issue a written decision revoking or modifying the emergency order under consideration, the hearing officer shall include findings of fact and conclusions of law to support such action.

Section 6. Judicial Review. (1) In order to grant relief from a final order resulting from an emergency hearing, a reviewing court must conclude that the hearing officer was clearly erroneous in finding that the findings of fact were supported by substantial evidence or in finding that the findings of fact established a violation of one (1) or more provisions of KRS 311.595.

(2) A reviewing court shall not award injunctive relief from a final order affirming an emergency order of suspension or restriction without providing the board with a reasonable opportunity to be heard.

(3) If the findings of fact are supported by substantial evidence and establish one (1) or more violations of KRS 311.595, the reviewing court shall defer to the professional judgment of the board's inquiry panel or panel chair, acting on behalf of the inquiry panel, as to the specific protections required to protect the public health, safety or welfare. The reviewing court shall not substitute its judgment for the board's as to the level of protection required based upon the violations found.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 10:30 p.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222 (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for emergency hearings before the board.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the procedure for emergency hearings before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the procedure for emergency hearings before the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the procedure for emergency hearings before the board.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect any licensee that has emergency disciplinary action filed against their license.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 be required to follow this procedure if an emergency order has been filed against their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only cost will occur if the licensee has an emergency order filed against their license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have procedures to follow for emergency orders.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205.

(3) 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:

KENTUCKY BOARD OF MEDICAL LICENSURE General Government Cabinet Kentucky Board of Medical Licensure (New Administrative Regulation)

201 KAR 9:250. Registration and Oversight of Pain Management Facilities.

RELATES TO: KRS 218A.175, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the requirements for registration and oversight for pain management facilities.

Section 1. Definitions. (1)(a) "Pain Management Facility" means a facility where the majority of the patients receiving treatment from the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, and:

1. The facility's primary practice component is the treatment of pain; or

2. The facility advertises in any medium for any type of pain management services.

(b) If a facility meets the criteria outlined in paragraph (a) of this subsection, it will be considered a "pain management facility" regardless of whether the owners or operators of the facility have designated the facility as an "urgent treatment center," "internal medicine practice," "general medicine practice," "family practice," "private clinic," or some other type of practice.

(c) "Pain Management Facility" does not include the following:

1. A hospital defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;

2. A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;

3. A hospice program or residential hospice facility licensed under KRS Chapter 216B;

4. An ambulatory surgical center licensed under KRS Chapter 216B; or

5. A long-term-care facility licensed under KRS Chapter 216.510.

(2) For the purposes of subsection (1) of this section, "practitioner" includes physicians, nurses, physician assistants, acupuncturists and any other licensed health care practitioner.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Board" means the Kentucky Board of Medical Licensure.

(5) "License in good standing" means an active license to practice medicine or osteopathy that is not currently subject to any final order, agreed order, emergency order, interim agreed order of any nature, or letter of agreement issued by or entered into with the Board.

Section 2. Ownership or Investment Interest. (1)(a) No person, other than a physician who is currently licensed to practice medicine or osteopathy within the Commonwealth of Kentucky and whose Kentucky medical or osteopathic license is presently in good standing, shall have an ownership or investment interest in a pain management facility that is formed or comes into existence

after April 24, 2012, or in a pain management facility existing on April 24, 2012, if there has been an administrative sanction or criminal conviction relating to controlled substances imposed upon the facility or upon any person employed by the facility for an act or omission done within the scope of the facility's licensing or the person's employment.

(b) Any person may have an ownership or investment interest in a pain management facility that was in existence and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed upon the facility or upon any person employed by the facility for an act or omission done within the scope of the facility's licensing or the person's employment. If the facility or one (1) or more of its employees sustains such an administrative sanction or criminal conviction, only a physician licensed in good standing in Kentucky may have an ownership or investment interest in the facility from the date of the sanction or conviction forward.

(c) Credit extended by a financial institution as defined in KRS 136.500 to the facility shall not be deemed an investment interest under this subsection.

(d) A physician who has an ownership or investment interest in a pain management facility during any period when the physician is not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall be deemed to be in violation of KRS 311.595(12) and shall be deemed to be practicing medicine without a license and subject to criminal sanctions. If the Board determines that a physician has maintained an ownership or investment interest in a pain management facility during a period when that physician was not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky, it may deny an application for licensure filed by that physician or may take appropriate disciplinary action against a license previously issued to the physician.

(e) A physician who maintains an ownership or investment interest in a pain management facility during any period when their Kentucky license is not in good standing shall be in violation of KRS 311.595(12) and subject to disciplinary action by the Board.

Section 3. Divestiture of Ownership or Investment Interest. (1) A physician who has an ownership or investment interest in a pain management facility shall immediately divest himself of that ownership or investment interest when:

(a) The physician's Kentucky license is no longer active for any reason; and/or

(b) The physician's Kentucky license becomes subject to any final order, agreed order, emergency order, interim agreed order of any nature, or letter of agreement issued by or entered into with the Board.

(2) (a) If a physician fails to immediately divest himself of the ownership or investment interest in the pain management facility as required by subsection (1) of this section, the Board may institute an action for injunctive relief pursuant to KRS 311.605(3) and (4) to require the physician to immediately divest himself of the ownership or investment interest in the pain management facility.

(b) An unlawful ownership or investment interest in a pain management facility shall be considered the unlawful practice of medicine and shall be considered to cause irreparable injury to the Commonwealth, acting through this board.

Section 4. Registration; Amended Registration; Fee. (1)(a) On or before August 1, 2012 and August 1 of each succeeding year, every pain management facility operating as the private office or clinic of a physician within the Commonwealth of Kentucky shall register with the Board, providing the following specific information in writing:

1. The name, business address, profession, current professional licensing status and nature and extent of ownership or investment interest of each person who has or maintains an ownership or investment interest in the pain management facility. For each person who has or maintains an ownership or investment interest in the pain management facility, the facility will report whether that person has an ownership or investment interest in any other pain management facility operating within the Commonwealth of Kentucky and, if so, the name and address of the other pain management facility(ies) in which the person has an ownership or invest-

ment interest;

2. The names and addresses of every practice location owned and operated by that pain management facility;

3. The hours of operation of every practice location owned and operated by that pain management facility;

4. The names and professional status of each employee at each practice location owned and operated by that pain management facility;

5. The name, professional license number and practice address of the physician owner or owner's designee who is a physician and will be physically present practicing medicine in the pain management facility for at least fifty (50) percent of the time patients are present at the facility. The facility shall also state its plan for ensuring that the designated physician owner or owner's physician designee will be physically present practicing medicine in the facility and, if the facility owns and operates multiple practice locations, the plan to ensure that a physician owner or owner's physician designee is physically present practicing medicine in each practice location for at least fifty (50) percent of the time that patients are seen at each practice location;

6. For each owner's physician designee who will fulfill the oversight responsibility, an attestation that the physician designee is employed by the owner and the plan for owner supervision of the physician designee;

7. An attestation by the physician owner that the owner or owner's physician designee meets one of the following qualifications for fulfilling the oversight responsibility, specifying each qualification met by the physician owner or owner's physician designee:

a. Holds a current subspecialty certification in pain management by a member of the American Board of Medical Specialties;

b. Holds a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

c. Holds a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties;

d. Holds a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

e. Holds a current board certification by the American Board of Pain Medicine;

f. Holds a current board certification by the American Board of Interventional Pain Physicians;

g. Has completed an accredited fellowship in pain management; or

h. Was an owner or practiced in that specific pain management facility prior to and continuing through July 20, 2012 and meets the following qualifications:

(i) Completed an accredited residency which included a component in the practice of pain management;

(ii) Practiced in the specialty of pain management during the five-year period preceding July 20, 2012;

(iii) Is eligible for and has provided the Board with written verification that the licensee has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

(iv) Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician must meet one (1) of the requirements of clauses a. to f. of this subparagraph, to continue to be qualified to provide the on-site supervision required by Section 6 of this administrative regulation.

(2) At the time of filing of the registration required by subsection (1) of this section, each pain management facility operating as the private office or clinic of a physician shall pay an annual fee of \$1,000.00 to the Board to defray the costs of registration and enforcement of this administrative regulation.

(3) If, during the effective period of the annual registration, a new or different physician obtains an ownership or investment interest in the pain management facility, or there is a change in the

physician owner or physician designee who will practice on-site at least fifty (50) percent of the time the facility is open to patients, the facility shall file an amended registration with the Board identifying these physicians and providing the information required by subsection (1) of this section about the new or different physicians, within ten (10) days of that change.

(4) Failure to file the required registration or to pay the annual fee on or before August 1 of each year shall constitute a violation of KRS 311.595(12) and will serve as a basis for discipline by the Board against the license of any physician who has an ownership or investment interest in the facility that failed to file the required registration.

Section 5. Identification and Qualifications of Prescribers Employed by the Facility; Notification of Changes. (1) As part of its initial and annual registration, the facility shall identify each physician, who is employed by the facility in any capacity, who will be prescribing or dispensing controlled substances to patients of the facility.

(2) Each licensed physician who will prescribe or dispense controlled substances to patients of the facility as part of their employment arrangement with the facility must be board certified throughout the period they are prescribing or dispensing controlled substances to patients of the facility.

(3) No licensed physician may prescribe or dispense controlled substances to patients of the facility if the physician has:

(a) Had an application for a license or certificate to prescribe, dispense, or administer controlled substances denied in any jurisdiction or by any governmental agency;

(b) Had a Drug Enforcement Administration permit to prescribe, dispense or administer controlled substances revoked;

(c) Had their professional ability or authority to prescribe or dispense controlled substances revoked, restricted, or limited in any manner by a licensing authority of any state; or

(d) Been convicted of or entered a plea of guilt, nolo contendere or Alford plea, regardless of adjudication, to any felony or misdemeanor relating to controlled substances, in any state or federal court.

(4) Any time a licensed physician with the responsibility to prescribe or dispense controlled substances to patients of the facility leaves the employment of the facility or is hired by the facility, the facility shall notify the board in writing within ten (10) days of each change in physician staffing of the facility.

Section 6. On-site Supervision. (1) At least one (1) of the physician owners of the pain management facility, or an owner's designee who meets the qualifications established by this administrative regulation, shall be physically present and practicing medicine or osteopathy in each practice location of the pain management facility for at least fifty (50) percent of the time that patients are present at the practice location(s) of the facility.

(2) If, for whatever reason, the physician owner or qualified designee is not present in each practice location of a pain management facility for at least fifty (50) percent of the time that patients are present at the practice location(s) of the facility for any given calendar week, the facility shall immediately notify the board of that fact in writing and include the reasons for the non-compliance.

(3) Any violation of this section shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.595(3) and (4) by the physician owner and, if applicable, the qualified designee who was responsible for being present at the practice location during that period.

Section 7. Methods of Payment. (1) Each pain management facility shall accept private health insurance as one (1) of the facility's allowable forms of payment for goods and services provided, so long as the goods or services provided are covered items under the applicable health insurance plan.

(2) Each pain management facility shall accept payment for services rendered or goods provided to a patient only from the patient or from the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

Section 8. Record-Keeping; Inspection. (1) Each pain management facility shall document on a weekly basis that a physician owner or an owner's physician designee who is employed by and under the direct supervision of the owner was physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients were present in the facility during that week. Such documentation shall include:

(a) The name, practice address, and phone number of the physician owner or physician designee who fulfilled this oversight function for that specific week;

(b) The practice address of each practice location owned and operated by that pain management facility;

(c) The days and hours each practice location of the pain management facility was open to patients during that specific week;

(d) The days and hours the physician owner or physician designee was present in each practice location for the pain management facility for that specific week; and

(e) A listing of the patients treated by the physician owner or physician designee during that specific week.

(2) Each pain management facility shall also utilize and maintain daily sign-in sheets, that include the legible name of each patient seen by the practice or facility on that day, for each and every day that the practice or facility is open to patients or the public, for each practice location of the practice or facility.

(3) The pain management facility shall maintain the weekly reports required by subsection (1) of this section and the daily sign-in sheets required by subsection (2) of this section on site in a readily accessible location for a minimum period of six (6) years.

(4) Upon request by an employee or agent of the Board, the pain management facility shall permit the Board employee or agent to inspect and copy the weekly reports and daily sign-in sheets maintained on site.

(5) For the purpose of enforcing the provisions of this administrative regulation, agents of the board shall have the power and authority to:

(a) Enter upon professional premises during periods when those premises are otherwise open to patients or the public;

(b) Obtain evidence, including but not limited to psychiatric or nonpsychiatric patient records, by consent or pursuant to a subpoena or search warrant;

(c) Interview all persons including owners, employees, or patients; and

(d) Require the production of books, papers, documents, or other documentary evidence either by consent or pursuant to a subpoena or search warrant.

Section 9. Proof of Operation of a Pain Management Facility. (1) The board may establish sufficient proof that a clinic, practice, or facility is a pain management facility subject to the provisions of this administrative regulation by establishing that:

(a) The facility has filed a registration with the board as a pain management facility; or

(b)1. For any selected thirty (30) day period, the majority of patients listed on the daily sign-in sheets maintained by the clinic, practice, or facility received controlled substances or a prescription for controlled substances during that period; and

2. One (1) of the following additional conditions was present during that thirty (30) day period:

a. A primary component of the practice was the treatment of pain; or

b. The facility advertised in any medium for any type of pain management services.

(2) The board may establish sufficient proof that the majority of patients listed on the daily sign-in sheets for the specified thirty (30) day period received controlled substances or a prescription for controlled substances on their visit by comparing the names on the sign-in sheet to the KASPER report for that thirty (30) day period.

Section 9. Physical Environment. (1) Each pain management facility shall meet each of the requirements for the physical environment of the facility as set out in 902 KAR 20:420.

(2) Each individual failure of a physician who has an ownership or investment interest in a pain management facility to fully comply with the requirements of 902 KAR 20:420, Section 9, shall consti-

tute a separate violation of KRS 311.595(9) and (12).

Section 10. Violations; Enforcement; Emergency Action. (1) Any violation of the requirements of this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3) given the circumstances.

(2) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky while practicing at a pain management facility, a licensee must practice in a lawful pain management facility.

(3) A pain management facility shall be considered an unlawful pain management facility if it:

(a) Permits unqualified persons to gain or maintain an ownership or investment interest in the pain management facility; or

(b) Fails to ensure that a qualified physician owner or physician designee is physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility.

(4) Prescribing or dispensing controlled substances within the Commonwealth of Kentucky while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare of the public, for the purposes of KRS 311.592 and 13B.125.

(5) If the board receives proof that a licensed physician is prescribing or dispensing controlled substances while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until such time as the licensee has provided sufficient proof that they are no longer employed by or practicing in an unlawful pain management facility.

(6) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to subsection (3) of this section shall remain valid and in effect until the board has received sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility. Upon receipt of such sufficient proof, the panel or its chair will immediately issue an order terminating the emergency order issued pursuant to this section.

(7) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with substantial evidence that the licensee was prescribing or dispensing controlled substances within an unlawful pain management facility.

(8) If a licensee should prescribe or dispense controlled substances within the Commonwealth of Kentucky during any period when the licensee is employed by or practicing in an unlawful facility, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and will serve as the basis for disciplinary sanctions pursuant to KRS Chapter 311.595.

Section 11. Periodic KASPER Reviews. (1) The board shall have the authority pursuant to KRS 218A.202 and 218A.240 to obtain KASPER reports and analyses for practitioners practicing in pain management facilities.

(2) At least once each year, the board shall obtain a KASPER review and analysis for each physician who has or maintains an ownership or investment interest in, or is employed by, or practices in, a pain management facility to determine whether improper, inappropriate, or illegal prescribing is occurring. If the board determines that there is evidence to indicate that improper, inappropriate, or illegal prescribing is occurring, it will initiate an investigation of that physician and notify the appropriate agencies of its investigation.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 1:30 p.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registration and oversight of pain management facilities.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for registration and oversight of pain management facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish requirements for registration and oversight of pain management facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for registration and oversight of pain management facilities.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect anyone that has an ownership or interest in a pain management facility.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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: Registration will be required for pain management facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The registration fee is \$2,000 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pain management facilities will be regulated and controlled so as to curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: \$100,000.

(b) On a continuing basis: \$100,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Fees generated from registration of pain management facilities will provide the source of funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a fee of \$2,000 per year for the registration of pain management facilities.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.175.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Administrative Regulation)

201 KAR 9:260. Professional Standards for Prescribing and Dispensing Controlled Substances.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances. Each physician who is authorized to prescribe or dispense controlled substances shall conform to the following mandatory professional standards relating to controlled substances while practicing within the Commonwealth of Kentucky.

Section 1. Exceptions. (1) The professional standards established in this administrative regulation shall not apply to physicians prescribing or dispensing controlled substances:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital, during and as part of a normal and expected part of the patient's course of admission at that hospital;

(c) To a patient for the treatment of pain associated with the treatment of cancer;

(d) To a patient who is a registered resident of a skilled long-term care facility; or

(e) As a direct part of their professional responsibilities in an emergency department and in accordance with the professional standards established in Section 5 of this administrative regulation.

(2) These exceptions do not apply to the standards established in KRS 218A.172.

Section 2. Professional Standards for Initial Prescribing or Dispensing of Controlled Substances. Prior to the initial prescribing or dispensing of any controlled substance for a specific medical complaint and related symptoms, each physician shall:

(a) Verify the identity of the patient by a current and valid government-issued photographic identification. If the physician does not have a copy of that identification in the patient's medical record, that physician shall ensure that the identification is copied and placed in the patient's medical record for future reference;

(b) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and conduct a physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record;

(c) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. This requirement to obtain and review a KASPER report shall not apply to:

1. A physician prescribing or dispensing controlled substances to a patient, who is younger than eighteen (18) years of age at the time of prescribing or dispensing, for the treatment of Attention Deficit Hyperactive Disorder or Attention Deficit Disorder; or,

2. A physician prescribing or dispensing Schedule IV or V controlled substances other than those listed in this specific subsection. The physician shall obtain and review a KASPER report before initially prescribing or dispensing any of the following Schedule IV controlled substances:

- (a) Ambien;
- (b) Anorexics;
- (c) Ativan;
- (d) Klonopin;
- (e) Librium;
- (f) Nubain;
- (g) Oxazepam;
- (h) Phentermine;
- (i) Soma;
- (j) Stadol;
- (k) Stadol NS;
- (l) Tramadol;
- (m) Valium;
- (n) Versed; and
- (o) Xanax; or

3. A physician who is unable to obtain and review a KASPER report in a timely manner for reasons beyond the physician's control determines, upon the available facts, that it is medically appropriate to prescribe controlled substances in the absence of a KASPER report. For this exception, the physician shall document as soon as possible the circumstances that made it impossible to obtain and review a KASPER report before prescribing and the reason(s) the physician determined it was medically appropriate to prescribe controlled substances in the absence of KASPER information.

(d) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified. When the identified risks are significant or unique, the physician shall document in the patient's record the reasoning underlying the decision to prescribe or dispense controlled substances in spite of those risks;

(f) Avoid providing more controlled substances than necessary

by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period;

(g) Not prescribe or dispense long-acting or controlled-release opioids (e.g. OxyContin, fentanyl patches, and methadone) for acute pain;

(h) Explain to the patient that controlled substances used to treat an acute medical complaint are for time-limited use, and that the patient should discontinue the use of controlled substances when the condition requiring the controlled substance use has resolved;

(i) Explain to the patient how to safely and properly dispose of any unused controlled substances.

Section 3. Professional Standards to Commence the Long-Term Use of Any Controlled Substance. Before a physician continues to prescribe or dispense any controlled substance to a patient for a medical complaint or its associated symptoms for a total period of longer than three (3) months, the physician shall comply with the following mandatory professional standards:

Patient History. (1) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record in a legible manner, in sufficient detail to provide for meaningful diagnosis and treatment of the patient, or to allow for another practitioner to assume the medical care of the patient at any given time in a safe and medically appropriate manner:

(a) History of present illness, including each of its components;

(b) Past medical history, including past diagnostic efforts and treatments for the present medical complaint and other medical complaints;

(c) History of legal or illegal substance use by the patient and by first degree relatives of patient, including treatments for abuse or dependence;

(d) Past family history of illnesses and treatment relevant to the medical complaint and related symptoms; and,

(e) Psychosocial history.

(2) If a physician's practice utilizes a patient questionnaire as a primary source of obtaining such information, the physician shall ensure that:

(a) All questions are completely answered;

(b) Any material conflict in the answers is clarified with the patient;

(c) Complete information is obtained regarding any significant disclosure; and,

(d) All relevant information is incorporated into the patient's record and utilized in the development of the working diagnosis.

Physical Evaluations and Assessments.(1) The physician shall conduct a comprehensive physical examination of the patient for all medical conditions and related symptoms, other than psychiatric conditions, and properly document the findings of each evaluation or assessment in the patient's record, including but not limited to:

(a) Appropriate clinical examination addressing the medical complaint and related symptoms of a sufficient degree to support the medical indications for prescribing or dispensing controlled substances on a long-term basis;

(b) Measurable examinations that will establish baselines and will assist in establishing and periodically evaluating the functional goals of any treatment plan.

(4) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall arrange for such evaluation as quickly as possible in order to be able to incorporate the findings into the working diagnosis and treatment plan. The physician shall document the relevant information obtained from the evaluation. If the physician determines that such an evaluation is necessary and the patient declines or fails to complete the evaluations in a timely manner for any reason, then the physician shall not continue the use of controlled substances unless the physician determines that continued use of controlled substances is safe and medically appropriate in the absence of such information. In that event, the physician shall document the reasons that the patient failed to complete the evaluation and the reasoning supporting the continued use of controlled substances in the absence of that relevant information;

Obtaining Medical Records from Other Practitioners. (1) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of controlled substances, the physician shall request a copy of the other physician's records regarding the patient as quickly as possible, in order to incorporate such information into the working diagnosis and treatment plan;

(2) If the physician has requested a copy of the other physician's records and has not received them within a reasonable time, the physician will take appropriate steps to follow up and obtain such records. If the physician is unable, after reasonable attempts, to obtain the relevant records, the physician shall document the efforts made to obtain the records, the failure to receive the records, and the impact the inability to obtain such records has upon the physician's decision whether to continue or modify treatment, particularly the use of controlled substances, for that patient;

(3) Each physician, who receives a written request from another physician for a copy of records relating to that physician's prior treatment of a specific patient, shall promptly provide a copy of the patient's medical record to the requesting physician.

Establishing a Working Diagnosis. (1) Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms. It is not sufficient to simply describe or list the related symptoms;

(2) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as specialized evaluations or assessments, referral to appropriate specialists, usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis;

(3) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician must determine whether long term use of controlled substances is indicated and appropriate. The physician may determine that a different or lower level of treatment is more appropriate until a working diagnosis can be established;

(4) The physician shall document the working diagnosis or all of the efforts taken in their unsuccessful attempt to formulate a working diagnosis and the reasons for their decision whether or not to utilize controlled substances on a long-term basis in the absence of a working diagnosis.

Formulating a Treatment Plan. (1) The physician shall formulate and document in the patient's medical record the proposed treatment plan, based upon the working diagnosis of the medical complaint and related symptoms, along with relevant baseline information obtained in the evaluation of the patient;

(2) The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations, which will permit the physician to assess whether a treatment is appropriately addressing the medical complaint and improving the patient's functional abilities. Statements such as "treat [medical] condition and related symptoms", "to make patient feel better," or "prescribe controlled substances" are not sufficient treatment goals. The treatment plan shall include an exit strategy for the termination of use of any treatment modality, including controlled substances, for appropriate reasons;

Patient Screening. (1) The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

(a) Is presently suffering from abuse or dependence of any substance, including alcohol;

(b) Is presently suffering from a psychiatric or psychological condition that requires treatment or that may impact the patient's treatment with controlled substances; or

(c) Presents a significant risk for illegal diversion of controlled substances, based upon information, gained by obtaining and reviewing a current KASPER report for all available data on that patient, that the patient has obtained controlled substances from multiple practitioners or has refilled prescriptions for controlled substances inappropriately.

(2) If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, the physician shall refer the patient to an appropri-

ate treatment program or provider, or to an addiction specialist. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from a qualifying psychiatric or psychological condition, the physician shall refer the patient for a psychological or psychiatric consultation, if appropriate. After making such referral, the physician shall consider the recommendations of the treatment program or specialist, before determining whether to continue with the long-term use of controlled substances with that patient, and, if so, appropriate treatment measures and monitoring. The physician shall document all relevant information about the screen, the referral, the recommendations, and any resulting prescribing decisions in the patient's medical record;

(3) If, after screening, the physician determines that there is a significant likelihood that the patient may illegally divert controlled substances, the physician must determine whether the use of a "prescribing agreement" would be sufficient to prevent diversion. This determination necessarily requires the physician to determine whether they have the professional resources to conduct necessary monitoring of the patient's controlled substance use. The terms of a "prescribing agreement" shall include, but not be limited to the patient's agreement to:

- (a) Avoid improper use of controlled substances;
 - (b) Identify other licensed professionals providing medical care to the patient and authorize the physician to communicate with these other providers to coordinate care, particularly prescribing or dispensing of controlled substances;
 - (c) Only obtain controlled substances from the designated physician;
 - (d) Only fill controlled substances prescriptions at an approved pharmacy;
 - (e) Submit to urine drug screens or pill counts on request;
 - (f) Not seek early refills or call-in prescriptions of controlled substances;
 - (g) To produce an official police report for any effort to replace controlled substances that were lost or stolen;
 - (h) If necessary, submit to third-party administration of controlled substances prescribed if determined appropriate.
- In order to avoid confusion and for the benefit of both parties, the physician shall consider including in the agreement the consequences for a violation of each provision. The "prescribing agreement" and informed consent document may be combined into one document.

(4) The physician shall obtain and document a baseline urine drug screen to determine whether the medications that are being prescribed are in the patient's system and to determine whether any un-prescribed or illegal controlled substances are in the patient's system.

(5) If, after screening, the physician determines that the controlled substances prescribed to the patient will be used or are likely to be used other than medically or other than for an accepted therapeutic purpose, the physician shall not prescribe controlled substances to that patient;

Obtaining Informed Consent. (1) The physician shall explain the risks and benefits of long term use of controlled substances and obtain informed consent from the patient for such prescribing. The decision to provide controlled substances to a patient on a long-term basis should be a deliberate and conscious decision by both the physician and the patient, after full consideration of the risks and benefits of such treatment;

(2) After explaining the risks and benefits of long-term use of controlled substances, the physician shall obtain the informed consent of the patient, in a writing that specifically sets out each risk and benefit discussed with the patient, and shall include and maintain that written informed consent in the patient's medical record. The informed consent document and any "prescribing agreement" may be combined into one document.

Initial Trial of Other Treatments; Titration. (1) Controlled substances shall only be utilized on a long-term basis after other appropriate non-controlled therapies have been attempted and have proven unsuccessful in appropriately treating the medical complaint and related symptoms. If controlled substances are utilized on a long-term basis, the physician shall prescribe or dispense controlled substances at the lowest level and for the shortest dura-

tion necessary to appropriately treat the medical complaint and related symptoms;

(2) The physician shall initially attempt, to the extent possible, or to establish and document a previous attempt by another physician, in increasing order, the following steps to treat the medical complaint and related symptoms:

- (a) Use of physical therapy modalities alone or use of non-steroidal anti-inflammatory medication alone;
- (b) Use of physical therapy modalities in conjunction with non-steroidal anti-inflammatory medication;
- (c) Use of lowest level of controlled substances considered effective to treat the medical complaint and related symptoms, as part of an opioid trial; and,
- (d) Titration of levels of controlled substances in measured steps until the level of controlled substances adequately treats the medical complaint and related symptoms.

Section 4. Professional Standards for Long-Term Prescribing or Dispensing of Controlled Substances. If a physician continues to prescribe or dispense controlled substances beyond three (3) months for a specific medical complaint and related symptoms, the physician shall comply with the following mandatory professional standards:

Patient Visits. (1) The physician shall personally see the patient at least once a month initially for evaluation and review of progress. The physician may see the patient less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

- (a) The controlled substances prescribed or dispensed have been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;
- (b) The controlled substances prescribed or dispensed are not causing harmful side effect; and,
- (c) There is sufficient monitoring in place to ensure that the patient will not use the controlled substances in an improper or inappropriate manner or divert them for an improper or inappropriate use.

(2) At each patient visit, the physician shall obtain a current history from the patient, shall conduct a focused physical examination, and shall perform appropriate measurable examinations as indicated in the treatment plan. The physician shall document all relevant information into the patient's medical record;

(3) At each patient visit, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained during that encounter to determine whether there has been functional improvement or any change in baseline measures. If appropriate, the physician shall modify the diagnosis or treatment plan, or both, as appropriate. The reasons for any modification shall be documented in the patient's medical record.

Reviewing Functional Goals; Specialty Consultations. (1) The physician shall regularly review and determine whether the patient is exhibiting improved function, by meeting treatment goals jointly set, and is responding favorably to the medical treatment, including controlled substance therapy;

(2) For patients presenting a significant risk of diversion or improper use of controlled substances, the physician shall obtain the patient's consent to discuss the patient's treatment with independent sources, including family members, in order to verify:

- (a) The patient's progress toward or achievement of treatment goals; and,
- (b) The patient's use of controlled substances and any side effects of that use, through independent sources;

(3) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with controlled substances, the physician shall obtain consultative assistance to determine whether there are undiagnosed conditions that must be addressed to resolve the medical complaint, such as psychiatry, neurology, internal medicine, physical medicine and rehabilitation, orthopedics, addiction medicine, rheumatology, or oncology;

(4) For patients exhibiting symptoms suggestive of mood, anxiety and/or psychotic disorders, the physician shall obtain psychiatric or psychological consultations for intervention if such condition is affecting treatment;

Managing Breakthrough Pain. (1) If a patient reports that they are experiencing episodes of "breakthrough" pain, the physician shall:

- (a) Attempt to identify the trigger or triggers for such episodes;
- (b) Determine whether the breakthrough pain may be adequately treated through non-controlled treatment;
- (c) If the episodes continue and the non-medication treatments do not adequately address the triggers, and after considering the risks and benefits, the physician determines to add an as-needed controlled substance to the regimen, the physician must take appropriate steps to minimize the improper or illegal use of the additional controlled substances by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period. The physician shall also include appropriate monitoring of the additional controlled substance;

Preventive Medicine. (1) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition. The physician shall ensure that the patient is provided treatment appropriate to the findings and results of such screening. The physician shall document in the patient's medical record the annual preventive health screening performed or the results of the screening performed by the primary treating physician, the findings and results, and the treatment provided, if any;

Periodic KASPER Reviews and Monitoring Adherence. (1) At least once every three months, the physician shall obtain and review a current KASPER report to ensure that the patient is properly filling the prescriptions issued and that the patient is not obtaining controlled substances from other practitioners without the physician's knowledge and approval;

(2) If, at any time while the physician is prescribing or dispensing controlled substances to a patient, the physician obtains or receives specific information that the patient is not taking the controlled substances as directed, is diverting controlled substances, or is engaged in any improper or illegal use of controlled substances, the physician shall immediately obtain and review a KASPER report for the purposes specified in subsection (1), supra;

(3) If a KASPER report discloses that the patient is not filling the controlled substance prescriptions as directed or is obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall immediately address those issues with the patient. The physician shall not prescribe or dispense any more controlled substances unless the physician has addressed the issues with the patient and has determined that it is medically appropriate and safe to continue prescribing or dispensing controlled substances to the patient;

(4) If a KASPER report discloses that the patient is obtaining controlled substances from other practitioners without the physician's knowledge and approval, the physician shall promptly notify the appropriate law enforcement agency and the other practitioners of the relevant information from the KASPER review;

(5) The physician shall document in the patient's medical record each time a KASPER review is performed, information obtained; and, if applicable, the patient's account of any irregularities noted in the review; and, the physician's determination of what actually occurred;

(6) If the physician should determine that it is medically appropriate and safe to continue or resume prescribing or dispensing controlled substances to the patient after assessing their failure to fill prescriptions as directed or their obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall fully document in the patient's medical record the physician's rationale for resuming such prescribing or dispensing, to include an analysis of the risks and benefits of that decision, along with the increased monitoring or oversight measures being put into place to ensure controlled substances are not illegally diverted or used;

(7) The physician shall obtain consultative assistance from a specialist when appropriate.

Random Pill Counts. (1) When appropriate, the physician shall conduct unannounced random pill counts to determine whether the patient is taking the controlled substances as directed;

(2) If the physician discovers irregularity in the pill count, the physician shall immediately address those findings with the patient. The physician must use all available information, including a discussion with the patient, to determine whether the patient is illegally diverting controlled substances;

(3) If the physician determines that the patient has diverted controlled substances, the physician should immediately discontinue the prescribing or dispensing of controlled substances to that patient, if medically feasible. If it is not medically feasible to immediately discontinue the prescribing or dispensing of controlled substances, the physician shall immediately begin a tapering process to safely discontinue prescribing or dispensing controlled substances, after putting in place specific protections that will ensure that no further diversion occurs, such as requiring storage and administration of the controlled substances to the patient by a person designated by the physician, with additional random pill counts;

(4) The physician shall fully document the results of each pill count conducted, the physician's determination of the reasons for any shortage, and the physician's decisions regarding continued treatment, in the patient's medical record.

Urine Drug Screens. (1) During the course of long-term prescribing or dispensing of controlled substances, the physician shall utilize urine drug screens in a random manner at appropriate times to determine whether the patient is taking prescribed medications or taking illegal substances or medications not prescribed by the physician.

(2) If the patient tested negative for controlled substances prescribed or dispensed by the physician and confirmatory testing substantiates a "red flag," the physician shall do one of the following:

- (a) Do a controlled taper;
- (b) Stop prescribing or dispensing controlled substances immediately; or,
- (c) Refer the patient to an addiction specialist or drug treatment program, depending upon the circumstances.

(3) The physician shall discontinue controlled substance treatment and/or refer the patient to addiction management if one or more of the following conditions exist:

- (a) There has been no improvement in function and response to the medical complaint and related symptoms;
- (b) Controlled substance therapy has produced significant adverse effects; and/or
- (c) The patient exhibits drug-seeking behavior or diversion.

Section 5. Professional Standards for Prescribing or Dispensing Controlled Substances in an Emergency Department Setting. The following professional standards apply to physicians who prescribe or dispense controlled substances in an emergency department setting:

(1) Before prescribing or dispensing a controlled substance in an emergency department setting, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint and conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record;

(b) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record, and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. If the physician cannot obtain a KASPER report for review in sufficient time to make the determination whether to prescribe or dispense controlled substances, the physician shall not prescribe or dispense controlled substances unless demonstrated and documented in the patient's medical record that the medical necessity for and safety in prescribing or dispensing the controlled substance substantially outweigh the risk of unlawful use or diversion of the controlled substances, particularly considering the nature and severity of the patient's presenting complaint;

(c) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified, and document that decision in the

patient's record and, if appropriate, the reasoning underlying that decision.

(2) The physician is strongly discouraged from and shall not routinely:

- (a) Administer intravenous and/or intramuscular controlled substances for the relief of acute exacerbations of chronic pain;
- (b) Provide replacement prescriptions for controlled substances that were lost, destroyed, or stolen;
- (c) Provide replacement doses of methadone, suboxone, or subutex for patients in a treatment program;
- (d) Prescribe long-acting or controlled-release controlled substances, such as OxyContin, fentanyl patches, or methadone or replacement doses of such medications;
- (e) Administer Demerol (Meperidine) to the patient;
- (f) Prescribe or dispense more than a three (3) day supply of controlled substances, with no refills.

(3) If the physician determines that exceptional circumstances exist which warrant prescribing or dispensing controlled substances in a manner that is strongly discouraged in Section 2(1), supra, the physician shall document in the patient's medical record the exceptional circumstances that warranted such prescribing or dispensing.

(4) The physician shall ensure that each patient receiving controlled substances by dispensing or prescription is given is informed, by handout or display signage, of the standards established in this regulation regarding the prescribing or dispensing of controlled substances.

(5) These standards shall not apply or be enforced during periods involving disaster, mass casualties, or extreme emergency.

Section 6. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician shall document all relevant information in a patient's medical record in a legible manner and in sufficient detail to provide for:

- (a) Meaningful diagnosis and treatment of the patient;
- (b) The safe and medically appropriate assumption of care by another physician at any given time; and,
- (c) This board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards. Such information includes, but is not limited to:
 - (a) Medical history and physical examinations;
 - (b) Diagnostic and laboratory test results and therapeutic outcomes;
 - (c) Evaluations and consultations;
 - (d) Records of past treatment outcomes including indicators of benefits, such as functional outcomes, and indicators of risk, such as adverse effects;
 - (e) Medications (including date prescribed, type, dosage, strength and quantity);
 - (f) Intensity levels of medical complaint and related symptoms;
 - (g) Subjective complaints of the patient;
 - (h) Objective findings related to subjective complaints, including impact on functioning and quality of life;
 - (i) Diagnostic impressions, and potential treatment options;
 - (j) Treatment objectives;
 - (k) Discussion of risks and benefits;
 - (l) Informed consent;
 - (m) Instructions and agreements; and
 - (n) Periodic review of treatments, including adverse effects, functional goals, and any other outcomes that reflect benefits or problems with the treatment.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances, to the professional standards established by KRS 218A.172, or to other professional standards, due to circumstances beyond their control, the physician shall appropriately document such circumstances and the physician's response to the inability to conform to the specific standards and the impact upon the continuing care of the patient.

Section 7. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) It is the acceptable and

prevailing medical practice within the Commonwealth of Kentucky for physicians prescribing or dispensing controlled substances to educate patients receiving controlled substances about the following subjects through verbal or written counseling:

- (a) Proper use;
- (b) Impact upon driving and work safety;
- (c) Effect of use during pregnancy;
- (d) Potential for overdose and appropriate response to overdose;
- (e) Safe storage of controlled substances;
- (f) Proper disposal;

(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov, and are incorporated by reference into this provision.

Section 8. Violations. (1) Any violation of the professional standards established in this regulation or in KRS 218A.172 shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions pursuant to KRS 311.595;

(2) Each violation of the professional standards established in this regulation or in KRS 218A.172 shall be established by expert testimony by one or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 20, 2012

FILED WITH LRC: July 20, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 9:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 20, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 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: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.
(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect every physician that prescribes and dispenses controlled substances in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 be required to follow the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having professional standards for prescribing and dispensing controlled substances to help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

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

GENERAL GOVERNMENT CABINET Kentucky Board of Podiatry (New Administrative Regulation)

201 KAR 25:090. Prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.205, 218A.172

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) requires the board to establish standard for prescribing controlled substances. KRS 218A.172 requires the board to promulgate administrative regulations governing the prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone. This administrative regulation establishes the standards for prescribing or dispensing controlled substances.

Section 1. Prescribing or dispensing a controlled substance.

(1) This administrative regulation governs the prescribing and dispensing of controlled substances listed in Schedule II through V as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130.

(2) When initially prescribing or dispensing a controlled substance, a licensee shall:

(a) Obtain a complete medical history and conduct a physical examination of the patient;

(b) Complete a written treatment plan which states the objectives of the treatment underlying the prescription of the controlled substance and which includes an outline of any further diagnostic examinations that may be required;

(c) Discuss the risks and benefits of the use of controlled substances with the patient or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(d) Verify that the patient is the person that he or she has identified himself or herself as being by requiring the person to produce proper government issued identification;

(e) Query the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) for all information available on the patient when prescribing controlled substances that are included in:

1. Schedule II;
2. Schedule III; and
3. The following from Schedule IV:

- a. Ambien;
- b. Anorexics;
- c. Ativan;
- d. Klonopin;
- e. Librium;
- f. Nubain;
- g. Oxazepam;
- h. Phentermine;
- i. Soma;
- j. Stadol;
- k. Stadol NS;
- l. Tramadol;
- m. Valium;
- n. Versed; and
- o. Xanax;

(f) Obtain consent for the treatment from the patient in writing; and

(g) Document the patient's file as required by Section 2 of this administrative regulation.

(3) When it is necessary to continue the prescription or dispensation of a controlled substance after the initial supply is completed, a licensee shall:

(a) Conduct, at reasonable intervals under the circumstances presented, all clinically indicated steps;

- (b) Review the course of treatment that he initially prepared to determine if any changes are required;
- (c) Provide any new information about the course of treatment or any changes made to the patient;
- (d) Query KASPER for all information available on the patient no less than once every three months for all available data on the patient to review that data before issuing any new prescription or refill for the patient for controlled substance specified in subsection (2)(e) of this section; and
- (e) Document the patient's file as required by Section 2 of this administrative regulation.

Section 2. Podiatric medical records for patients being prescribed controlled substance shall include at a minimum:

- (1) The patient's name;
- (2) The patient's date of birth;
- (3) The information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;
- (4) The podiatrist's diagnosis of the patient's condition;
- (5) The procedures and treatments to be undertaken and their objectives;
- (6) The date of the procedures or treatments;
- (7) Whether local or general anesthetics were used, including the type and the amount administered;
- (8) Diagnostic, therapeutic, and laboratory results;
- (9) The findings and recommendations of any other evaluations or consultations;
- (10) All medications administered or prescribed by the podiatrist, including the date, type, dosage, and quantity administered or prescribed;
- (11) Any post-treatment instructions from the podiatrist; and
- (12) Documentation that the KASPER query required by Section 3 of this administrative regulation was completed.

Section 3. When a prescription for a controlled substance is written, a podiatrist shall:

- (1) Obtain and document in the patient's podiatric medical record the information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;
- (2) Query the Kentucky All-Scheduled Prescription Electronic Reporting System (KASPER) for all available data on the patient if the controlled substance is one specified in Section 1(2)(e) of this administrative regulation and record the results of the query in the patient's record;
- (3) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and
- (4) Obtain consent for the treatment from the patient in writing.

Section 4. Dispensing Schedule II or Schedule III controlled substances containing hydrocodone. (1) A licensee shall not dispense more than a forty-eight (48) hour supply of Schedule II or Schedule III controlled substances containing hydrocodone.

(2) If a patient continues to present with pain after the initial supply has been completed and the podiatrist believes that an additional prescription for a controlled substance is medically appropriate, the podiatrist shall at a minimum:

- (a) Follow the requirements of Section 1 of this administrative regulation; and
- (b) Prescribe only that amount of the controlled substance that is appropriate under accepted and prevailing practice standards.

Section 5. Authority to prescribe controlled substances. (1) A podiatrist licensed by the board may prescribe any medicine necessary for the treatment of a patient that comes within the practice of podiatry as defined by KRS 311.380(2), including Schedule II and Schedule III controlled substances containing hydrocodone, if the licensee:

- (a) Has obtained a license number from the Drug Enforcement Administration;

(b) Registers with and utilizes the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) as required by KRS 218A.202;

(c) Follows the requirements of this administrative regulation; and

(d) Meets all the requirements for utilizing KASPER promulgated by the Cabinet as well as the requirements set forth in KRS 218A.202.

(2) A licensed podiatrist shall not prescribe or dispense:

(a) With the intent or knowledge that a medication will be used or is likely to be used for any purpose other than one that is necessary for medical treatment or therapeutic use;

(b) With the intent to evade any law governing the sale, use, or disposition of the medication;

(c) When the licensee knows or has reason to know that the abuse of the controlled substance is occurring or may result therefrom; and

(d) In such amounts that the licensee knows or has reason to know, under the circumstance, that the amount prescribed is excessive under accepted and prevailing practice standards.

(3) After a hearing conducted under KRS Chapter 13B and 201 KAR 25:051, the board shall fine a licensee who otherwise has the authority to prescribe controlled substances, but who has failed to register for an account with KASPER, an amount not less than \$250 per prescription for each such prescription that individual has written while not properly registered.

ROBERT LEVINE, DPM, President

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 20, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held September 24, 2012, at 1:00 p.m. in Conference Room C located in the Office of the Attorney General; 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Beverley White, Executive Director, Kentucky Board of Podiatry, P.O. Box 174; Glasgow, Kentucky 42142-0174, phone 270-834-8932, fax 270-834-1437.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for prescribing or dispensing controlled substances.

(b) The necessity of this administrative regulation: KRS 218A.205 mandates that the board to promulgate regulations for prescribing and dispensing controlled substances. KRS 218A.172 requires certain actions by licensees when prescribing or dispensing Schedule II controlled substances or Schedule III controlled substances containing hydrocodone. This administrative regulation establishes the standards for prescribing and dispensing controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218A.205 mandates that the board to promulgate regulations for prescribing and dispensing controlled substances. KRS 218A.172 requires certain actions by licensees when prescribing or dispensing Schedule II controlled substances or Schedule III controlled substances containing hydrocodone. This administrative regulation establishes the standards for prescribing and dispensing controlled substances.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation establishes the standards for prescribing and dispensing controlled substances.

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

(a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 180 persons are licensed to practice podiatry 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: Licensees will follow the procedures in the administrative regulation when prescribing controlled substances.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities identified in question (3): The costs for following the requirements of this administrative regulation are not known by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The health and welfare of the public will be protected from improper prescribing and dispensing of controlled substances.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

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

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all persons who have a license with the board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 218A.205; 218A.172; 311.410.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

704 KAR 7:160. Use of Restraint and Seclusion in Public Schools.

RELATES TO: KRS 156.160(1)(g), 158.444(1)

STATUTORY AUTHORITY: KRS 156.160(1)(g), 156.070, 158.444(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(g) and 158.444(1) give the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children. The first responsibility of Kentucky schools is to promote learning in a safe and healthy environment for all children, teachers, and staff. The improper use of restraint and seclusion by districts directly affects the psychological and physical welfare of students and may result in psychological harm, physical harm, or death of students. Because there is no evidence that restraint and seclusion is effective in reducing the occurrence of inappropriate behaviors, restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others. Restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. This administrative regulation establishes the requirements for the use of restraint and seclusion in districts and the notification and data reporting requirements for the use of restraint and seclusion in districts.

Section 1. Definitions. (1) "Aversive behavioral interventions" means a physical or sensory intervention program intended to modify behavior that the implementer knows would cause physical trauma, emotional trauma, or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others and may include hitting, pinching, slapping, water spray, noxious fumes, extreme physical exercise, loud auditory stimuli, withholding of meals, or denial of reasonable access to toileting facilities.

(2) "Behavior intervention" means the implementation of strategies to address behavior that is dangerous, inappropriate, or otherwise impedes the learning of the students or others.

(3) "Behavioral Intervention Plan" means a comprehensive plan for managing inappropriate or dangerous behavior by changing or removing contextual factors, antecedents, and consequences that trigger, maintain, or escalate inappropriate or dangerous behavior, and for teaching alternative appropriate behaviors to replace the inappropriate or dangerous behaviors.

(4) "Chemical restraint" means the use of medication to control behavior or restrict a student's freedom of movement that includes over-the-counter medications used for purposes not specified on the label but does not include medication prescribed by a licensed medical professional and supervised by qualified and trained individuals in accordance with professional standards.

(5) "Dangerous behavior" means behavior that presents an imminent danger of serious physical harm to self or others but does not include inappropriate behaviors such as disrespect, non-compliance, insubordination, or out of seat behaviors.

(6) "De-escalation" means the use of behavior management techniques intended to mitigate and defuse dangerous behavior of a student, that reduces the imminent danger of serious physical harm to self or others.

(7) "Emergency" means a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.

(8) "Functional Behavioral Assessment" means a process to analyze environmental factors such as any history of trauma, the combination of antecedent factors (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate or dangerous behavior and includes the collection of information through direct observations, interviews, and record reviews to identify the function of the dangerous behavior and guide the development of behavioral intervention plans.

(9) "Mechanical restraint" means the use of any device or equipment to restrict a student's freedom of movement, but does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional that are used for the specific and approved purposes for which such devices were designed and that may include adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraint for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities with risk of harm.

(10) "Parent" means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(11) "Physical Restraint" means a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely but does not include temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of encouraging a student to move voluntarily to a safe location.

(12) "Positive behavioral supports" means a school-wide systematic approach to embed evidence-based practices and data-driven decision-making to improve school climate and culture in order to achieve improved academic and social outcomes, to increase learning for all students, including those with the most complex and intensive behavior needs; and to encompass a range of systemic and individualized positive strategies to reinforce desired behaviors, to diminish reoccurrence of inappropriate or dangerous behaviors, and to teach appropriate behaviors to students.

(13) "Prone restraint" means the student is restrained in a face down position.

(14) "School personnel" means teachers, principals, administrators, counselors, social workers, psychologists, paraprofessionals, nurses, librarians, and other support staff who are employed in a school or who perform services in the school on a contractual basis but does not include school resource officers defined in KRS 158.441(2).

(15) "Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is prevented from leaving but does not include classroom timeouts, supervised in-school detentions, or out-of-school suspensions.

(16) "Student" means any person enrolled in a preschool, school level as defined in 704 KAR 5:240, Section 5, or other educational program offered by a local public school district.

(17) "Supine restraint" means a student is restrained in a face up position on his or her back.

(18) "Timeout" means a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Section 2. (1) Local districts shall establish local policies and procedures that:

(a) Ensure school personnel are aware of and parents are notified how to access its policies and procedures regarding restraint and seclusion;

(b) Are designed to ensure the safety of all students, including students with the most complex and intensive behavioral needs, school personnel, and visitors;

(c) Require school personnel to be trained in accordance with

the requirements outlined in Section 7 of this administrative regulation;

(d) Outline procedures to be followed during and after each incident involving the imposition of physical restraint or seclusion upon a student, including notice to parents, documentation of the event in the student information system, and a process for the parent or emancipated youth to request a debriefing session;

(e) Require notification, within twenty-four (24) hours, of the Kentucky Department of Education and local law enforcement in the event of death, substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty resulting from the use of physical restraint or seclusion;

(f) Outline a procedure by which parents may submit a complaint regarding the physical restraint or seclusion of their child, which requires the district and school to investigate the circumstances surrounding the restraint or seclusion, make written findings, and where appropriate, take corrective action; and

(g) Outline a procedure to regularly review data on restraint and seclusion usage and revise policies as needed.

(2) Local districts shall revise existing policies or develop policies consistent with this administrative regulation within ninety (90) calendar days of the effective date of this administrative regulation.

Section 3. (1) Physical restraint shall not be used:

(a) As punishment;

(b) As a means of coercion to force compliance or retaliation;

(c) As a substitute for appropriate educational or behavioral support;

(d) To prevent property damage in the absence of imminent danger of serious physical harm to self or others;

(e) As a routine school safety measure; or

(f) As a convenience for staff.

(2) School personnel are prohibited from imposing the following on any student at any time:

(a) Mechanical restraint;

(b) Chemical restraint;

(c) Aversive behavioral interventions that compromise health and safety;

(d) Physical restraint that is life-threatening;

(e) Prone or supine restraint; and

(f) Physical restraint that is prohibited by a licensed medical professional.

(3) Physical restraint may only be implemented if:

(a) The student's behavior poses an imminent danger of serious physical harm to self or others;

(b) The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication;

(c) The student's face is monitored for the duration of the physical restraint;

(d) Less restrictive interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others, except in the case of a clearly unavoidable emergency situation posing imminent danger of serious physical harm to self or others; and

(e) Assigned staff is appropriately trained to use physical restraint.

(4) When implementing a physical restraint, staff shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of serious physical harm.

(5) The use of physical restraint shall end as soon as:

(a) The student's behavior no longer poses an imminent danger of serious physical harm to self or others; or

(b) A medical condition occurs putting the student at risk of harm.

(6) School personnel imposing physical restraint in accordance with this administrative regulation shall:

(a) Be trained by an individual or individuals who have been certified by a crisis intervention training program that meets the established criteria in Section 6 of this administrative regulation, except in the case of clearly unavoidable emergency circumstances when trained school personnel are not immediately available.

ble due to the unforeseeable nature of the emergency circumstance; and

(b) Be trained in state administrative regulations and school district policies and procedures regarding restraint and seclusion.

(7) A functional behavioral assessment shall be conducted following the first incident of restraint, unless one (1) has been previously conducted for the behavior at issue.

Section 4. (1) Seclusion shall not be used:

- (a) As punishment;
- (b) As a means of coercion to force compliance or retaliation;
- (c) As a substitute for appropriate educational or behavioral support;

(d) To prevent property damage in the absence of imminent danger of serious physical harm to self or others;

(e) As a routine school safety measure;

(f) As a convenience for staff; or

(g) As a substitute for timeout.

(2) Seclusion may only be implemented when:

(a) The student's behavior poses an imminent danger of serious physical harm to self or others;

(b) The student is visually monitored for the duration of the seclusion;

(c) Less restrictive interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others; and

(d) Assigned staff is appropriately trained to use seclusion.

(3) The use of seclusion shall end as soon as:

(a) The student's behavior no longer poses an imminent danger of serious physical harm to self or others; or

(b) A medical condition occurs putting the student at risk of harm.

(4) A setting used for seclusion shall:

(a) Be free of objects and fixtures with which a student could inflict physical harm to self or others;

(b) Provide school personnel a view of the student at all times;

(c) Provide adequate lighting and ventilation;

(d) Be reviewed by district administration to ensure programmatic implementation of guidelines and data related to its use;

(e) Have an unlocked and unobstructed door; and

(f) Have at least an annual fire and safety inspection.

Section 5. (1) All incidents of the use of restraint and seclusion shall be documented by a written record of each episode of seclusion or physical restraint and be maintained in the student's education record. Each incident record shall be informed by an interview with the student and shall include:

(a) The student's name;

(b) A description of the incident and the student behavior that resulted in the restraint or seclusion;

(c) The date of the incident and staff members involved;

(d) The beginning and ending times of the incident;

(e) A description of any events leading up to the use of restraint or seclusion including possible factors contributing to the dangerous behavior;

(f) A description of the student's behavior in restraint or seclusion;

(g) A description of techniques used in restraining or secluding the student and any other interactions between the student and staff during the use of restraint or seclusion;

(h) A description of any interventions used immediately prior to the implementation of restraint or seclusion;

(i) A description of any injuries whether to students, staff, or others;

(j) An explanation as to why this behavior posed an imminent danger of serious physical harm to self or others;

(k) The date the parent was notified;

(l) A description of the effectiveness of restraint or seclusion in de-escalating the situation; and

(m) A description of staff response to the dangerous behavior.

(2) The parent of the student shall be notified of the restraint and seclusion verbally or through electronic communication, if available to the parent, as soon as possible within twenty-four (24) hours of the incident. If the parent cannot be reached within twenty-four (24) hours, a written communication shall be sent.

(3) The principal of the school shall be notified of the seclusion or physical restraint as soon as possible, but no later than the end of the school day on which it occurred.

(4) The incident record as outlined in Section 5(1) of this administrative regulation shall be completed within twenty-four (24) hours following the incident of seclusion or physical restraint.

(5) If the parent or emancipated youth requests a debriefing session under Section 2 of this administrative regulation, a debriefing session shall be held after the imposition of restraint and seclusion upon a student.

(6) All school personnel who were in the proximity of the student immediately before and during the time of the incident, the parent, the student, if the parent requests or if the student is an emancipated youth, appropriate supervisory and administrative staff, that may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members shall participate in the debriefing session.

(7) The debriefing session shall occur as soon as practicable, but not later than five (5) school days following the request of the parent or the emancipated youth, unless delayed by written mutual agreement of the parent or emancipated youth and the school.

(8) The debriefing session shall include:

(a) Identification of the events leading up to the seclusion or physical restraint;

(b) Consideration of relevant information in the student's records and information from teachers, parents, other school district professionals, and the student;

(c) Planning for the prevention and reduction of the need for seclusion or physical restraint, with consideration of the results of functional behavioral assessments, whether positive behavior plans were implemented with fidelity, recommended appropriate positive behavioral interventions, and supports to assist personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable; and

(d) For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, evidence of a referral under either law, or documentation of the basis for declining to refer the student.

(9) All documentation utilized in the debriefing session shall become part of the student's education record.

Section 6. (1) School personnel shall be trained to use an array of positive behavior interventions, strategies, and supports to increase appropriate student behaviors and decrease inappropriate or dangerous student behaviors.

(2) All school personnel in local districts shall have annual basic training in responding to students in a behavioral crisis and shall receive communication from the district identifying core team staff in the school setting that have been trained to engage in physical restraint or seclusion procedures. The training may be delivered utilizing web-based applications. The training shall include:

(a) Appropriate procedures for preventing the need for physical restraint and crisis intervention, including positive behavior management strategies;

(b) Proper use of positive reinforcement;

(c) The continuum of use for alternative behavioral interventions;

(d) Crisis prevention;

(e) De-escalation strategies of problematic behavior, including verbal de-escalation, and relationship building; and

(f) Identification of staff in the school setting that have been trained to engage in physical restraint or seclusion procedures.

(3) A core team of selected school personnel shall be designated to respond to emergency situations, including the physical restraint or seclusion of students. The core team shall receive yearly training in the following areas:

(a) Appropriate procedures for preventing the need for physical restraint or crisis intervention that shall include the de-escalation of problematic behavior, relationship building, and the use of alternatives to restraints;

(b) A description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint or crisis

intervention and methods for evaluating the risk of harm in individual situations, in order to determine whether the use of physical restraint or crisis intervention is safe and warranted;

(c) Simulated experience of administering and receiving physical restraint and crisis intervention, and instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

(d) Instruction regarding documentation reporting requirements and investigation of injuries; and

(e) Demonstration by participants of proficiency in administering physical restraint and crisis intervention.

Section 7. The following data shall be reported in the student information system related to incidents of restraint and seclusion:

(1) Aggregate number of uses of physical restraint;

(2) Aggregate number of students placed in physical restraint;

(3) Aggregate number of uses of seclusion;

(4) Aggregate number of students placed in seclusion;

(5) Aggregate number of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty to students related to physical restraint and seclusion;

(6) Aggregate number of instances of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty to staff related to physical restraint and seclusion; and

(7) Aggregate number of instances in which a school resource officer is involved in the restraint or seclusion of a student.

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

TERRY HOLLIDAY, Ph.D., Commissioner
DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 25, 2012, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes the requirements for appropriate use of restraint and seclusion in districts and the notification and data reporting requirements for the use of restraint and seclusion in districts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to the concerns about the increasing number of injuries and deaths across the nation related

to the use of restraint and seclusion and the increase in complaints in Kentucky in recent years related to restraint and seclusion in Kentucky public schools.

(c) How this administrative regulation conforms to the content of the authorizing statute: 156.160 (1) (g) and KRS 158.444 (1) gives the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children. The first responsibility of Kentucky schools is to ensure that schools promote learning in a safe and healthy environment for all children, teachers and staff. The improper use of restraint and seclusion by districts directly affects the psychological and physical welfare of students and may result in psychological or physical harm or possible death of students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will outline requirements for the use of restraint and seclusion so that the safety of children and staff will not be compromised.

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

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky will be impacted by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will impact schools and districts by providing the detail necessary to carry out their roles and responsibilities related to restraint and seclusion in public schools. The training requirement within the regulation may be additional for some districts but some schools and districts have indicated that they already train their staff in de-escalation techniques and provide more intensive training for a core team who will be restraining and secluding students. School districts will need to revise policies and procedures that do not align with the regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will need to train staff and collect data as outlined by the regulation and will need to revise policies and procedures to align with the regulation's requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the school district is not currently training a core team of staff in restraint and seclusion, the estimated cost will be \$1000 per staff member for initial training and \$300 per follow up training. The district may train the entire core team at a school if they choose or they may implement a train-the-trainer model and have directly trained and certified staff train other staff in order to reduce the financial burden on the district.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Research shows that when best practices such as the ones outlined in the regulation are implemented, the number of incidents of restraint and seclusion decrease due to the change in culture of the school and a reduction in the number of escalated and dangerous situations. Also, the number of incidents of injury for students and staff decrease when implementing these best practices.

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

(a) Initially: The proposed regulation will cost the KDE in increased staff time to prepare online de-escalation training that can be accessed free of charge by all districts to supplement their on-site training.

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(b) On a continuing basis: The proposed regulation will cost the KDE in increased staff time to provide technical assistance regarding the requirements of the regulation. The majority of the technical assistance can be provided by the regional special education cooperative infrastructure already in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars and IDEA funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing low-achieving schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 156.160 (1) (g) and KRS 158.444 (1) and federal law, The Individuals with Disabilities Education Act (IDEA) which requires students to be placed in the "least restrictive environment."

(3) 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. If school districts have not already been training a core team to implement restraint and seclusion, they will need to identify that core team in each school and, use the train-the-trainer model, train those staff. Also, they will need to revise policies and procedures. Therefore, an increase in expenditure the first year could result.

(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? Approximately \$1000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$300.

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: If school districts have not already been training a core team to implement restraint and seclusion, they will need to identify that core team in each school and, using the train-the-trainer model, train those staff. Also, they will need to revise policies and procedures. Therefore, an increase in expenditure the first year could result.

PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (Repealer)

806 KAR 9:211. Repeal of 806 KAR 9:210.

RELATES TO: KRS 304.9-105, 304.9-260, 304.9-270, 304.9-330, 304.9-430

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-

110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 9:210, Financial responsibility forms; time limit for replacement of evidence of licensee financial responsibility, which is no longer necessary due to an amendment to KRS 304.9-105, 304.9-330, and 304.9-430, which eliminates the requirement that insurers file proof of financial responsibility with the commissioner.

Section 1. 806 KAR 9:210, Financial responsibility forms; time limit for replacement of evidence of licensee financial responsibility, is hereby repealed.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2012

FILED WITH LRC: August 14, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by September 18, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40601, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 9:210.

(b) The necessity of this administrative regulation: On July 12, 2012, amendments to KRS 304.9-105, 304.9-330, and 304.9-430 went into effect that, among other things, removed the requirement that insurers or financial institutions providing financial responsibility for a licensed agent, consultant or adjuster, file evidence of that financial responsibility with the commissioner. 806 KAR 9:210 established the procedures and requirements for such filings and incorporated certain forms by reference. Because the filings are no longer required, 806 KAR 9:210 and the forms incorporated therein are no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required under Subtitle 9. This administrative regulation repeals an administrative regulation that is no longer necessary and eliminates the forms incorporated by reference therein.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals an administrative regulation that is no longer necessary and eliminates the forms incorporated by reference therein.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any insurer or financial institution providing financial responsibility for an agent licensed 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: None. Insurers or financial institutions providing financial responsibility for an agent licensed in Kentucky will no longer be required to file evidence of that financial responsibility with the commissioner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 304.9-080.

3. 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? Nothing.

(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? Nothing.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Insurance
Property and Casualty Division
(New Administrative Regulation)**

806 KAR 10:060. Cancellation of financial responsibility.

RELATES TO: KRS 304.1-040, 304.2-110, 304.10-030, 304.10-040, 304.10-140

STATUTORY AUTHORITY: KRS 304.2-110, 304.10-210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.10-210 requires the commissioner to make reasonable rules and regulations consistent with KRS 304, Subtitle 10, for the effectuation of the surplus lines law. This administrative regulation establishes a time limit for insurers, corporate sureties or other entities to notify surplus lines brokers of the cancellation of that financial responsibility.

Section 1. Definitions. (1) "Broker" is defined in KRS 304.10-030(1).

(2) "Insurer" is defined in KRS 304.1-040.

Section 2. Cancellation of Financial Responsibility. An insurer, corporate surety or other entity providing an errors and omissions insurance policy or a bond, as described in KRS 304.10-140(1), shall not terminate the insurance policy or bond unless it has given the broker at least thirty (30) days prior written notice of the termination.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2012

FILED WITH LRC: August 14, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2012 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by September 18, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation requires an insurance company, corporate surety or other entity providing an errors and omissions insurance policy or surety bond to a broker pursuant to KRS 304.10-140 to give at least 30 days prior written notice if it intends to terminate the insurance policy or the bond required to be maintained by a surplus lines broker as evidence of financial responsibility.

(b) The necessity of this administrative regulation: The insurance policy or surety bond required by KRS 304.10-140 is meant to provide financial protection to anyone damaged by a surplus lines broker's failure to adhere to the laws applicable to his or her license. Evidence of financial responsibility is required in order to maintain a license. While an insurer, corporate surety or other entity is permitted to terminate the insurance policy or bond, proper notice should be provided to the licensee so a subsequent insurance policy or surety bond can be maintained. This administrative regulation requires thirty (30) days prior written notice to the licensed surplus lines broker before an insurance policy or surety bond can be terminated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.10-210 authorizes the commissioner to adopt reasonable rules and regulations for the effectuation of the surplus lines law. This administrative regulation establishes a time limit for insurers, corporate sureties or other entities to notify surplus lines brokers of the cancellation of that financial responsibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.10-140(1) requires surplus lines brokers to keep in force evidence of financial responsibility, as set forth therein. This administrative regulation establishes a time limit for insurers, corporate sureties or other entities to give thirty (30) days' notice to surplus lines brokers of the cancellation of that financial responsibility.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,400 licensed surplus lines brokers and the insurers, corporate sureties or other entities providing them with the financial responsibility described in KRS 304.10-140.

(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: Insurers, corporate sureties or other entities will have to give surplus lines brokers at least thirty (30) days' notice of the cancellation of the financial responsibility described in KRS 304.10-140.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because entities issuing insurance policies or surety bonds typically provide thirty (30) days' written notice of termination today, there will not be a cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurers, corporate sureties or other entities providing brokers with the financial responsibility described in KRS 304.10-140 will have the ability, with proper notice, to terminate the insurance policy or bond. Without the ability to terminate, they would have to continue to provide security to the broker, even if they knew the broker was violating the law.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No

funding will be necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties or other entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 304.10-210.

3. 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? Nothing.

(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? Nothing.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues: (+/-)

Explanation: (+/-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(New Administrative Regulation)

902 KAR 20:420. Pain Management Facilities.

RELATES TO: KRS 216B.010-216B.131, 216B.990, 218A.175
STATUTORY AUTHORITY: Ky. Acts ch. 1 (SS HB 1), KRS 216B.042, 216B.105, 218A.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. KRS 218A.175 imposes a physician-ownership or investment requirement on all pain management facilities except for those health facilities operating as a pain management facility on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment. This administrative regulation establishes the minimum licensure requirements for the operation of a pain management facility that is exempt from the physician-ownership re-

quirement of KRS 218A.175. Facilities that meet the statutory definition of pain management facility and which are exempt from the physician-ownership requirement of KRS 218A.175 shall comply with the requirements of this emergency administrative regulation by July 20, 2012.

Section 1. Definitions. (1) "Adverse action" shall mean action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a pain management facility's license to operate.

(2) "License" means an authorization issued by the cabinet for the purpose of operating a pain management facility.

(3) "Licensee" means the owner, individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the pain management facility is vested.

(4) "National and State Background Check Program" means an initiative implemented by the cabinet, with available appropriations and funding, for the performance of:

(a) Registry checks; and

(b) Fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(5) "Pain management facility" or "facility" is defined by KRS 218A.175 to mean a facility where the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances and:

(a) The facility's primary practice component is the treatment of pain; or

(b) The facility advertises in any medium for any type of pain management services.

(6) "Unencumbered license" shall mean a license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to controlled substances.

Section 2. Exemption from Licensure. A pain management facility shall not include the following:

(1) A hospital, including a critical access hospital, as defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;

(2) A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;

(3) A hospice program or residential hospice facility licensed under KRS Chapter 216B;

(4) An ambulatory surgical center licensed under KRS Chapter 216B; or

(5) A long-term-care facility as defined in KRS 216.510.

Section 3. Ownership. (1) KRS 218A.175 provides that the physician ownership or investment requirement shall not be enforced against any pain management facility existing and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment.

(2) A facility licensed pursuant to this administrative regulation shall be immediately disqualified from the physician-ownership exemption of KRS 218A.175, and the cabinet shall revoke the facility's license pursuant to Section 11(3) of this administrative regulation if:

(a) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person contracted or employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment; or

(b) A change of ownership occurs.

(3)(a) A change of ownership shall be deemed to occur if any ownership interest, or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another for an existing facility licensed pursuant to this administrative regulation.

(b) The pain management facility's license shall not be transferred to a new owner.

Section 4. Background Checks and Prohibition Against Employment. (1) All owners, operators, and employees, including contract employees of a pain management facility, shall submit to an in-state criminal background check from the Justice and Public Safety Cabinet or Administrative Office of the Courts until such individuals are phased into the cabinet's National and State Background Check Program.

(2) A facility shall not be licensed if owned in part by, contracts with, or employs a physician or prescribing practitioner:

(a) Whose Drug Enforcement Administration number has ever been revoked;

(b) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c) Who has had any disciplinary limitation placed on his or her license by:

1. The Kentucky Board of Medical Licensure;

2. The Kentucky Board of Nursing;

3. The Kentucky Board of Dentistry;

4. The Kentucky Board of Optometric Examiners;

5. The State Board of Podiatry;

6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d) Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

Section 5. Licensure Application, Fee, and Renewal. (1) An applicant for an initial license as a pain management facility shall, as a condition precedent to licensure, be in compliance with this administrative regulation and KRS 218A.175, which may be determined through an on-site inspection of the facility.

(2) To qualify for licensure under this administrative regulation, a completed "Application for License to Operate a Pain Management Facility", incorporated by reference in Section 12(1)(a) of this administrative regulation, shall be:

(a) Submitted to and received by the cabinet no later than close of business, July 20, 2012; and

(b) Submitted to the cabinet annually thereafter.

(3) The initial fee for licensure and annual fee for re-licensure as a pain management facility shall be \$2,000, an amount determined to be sufficient to offset the cost of regulating pain management facilities.

(4) A license shall:

(a) Expire one (1) year from the date of issuance; and

(b) Be renewed if the licensee:

1. Submits a completed "Application for License to Operate a Pain Management Facility" accompanied by the \$2,000 annual re-licensure fee; and

2. Has no pending adverse action.

(5) A pain management facility that does not have a pending adverse action but has failed to renew its license on or before the expiration date shall cease operating the facility unless:

(a) The items required under subsection (4)(b) of this section have been submitted; and

(b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.

Section 6. Facility Patients. To determine if the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, the Office of Inspector General:

(1) Shall have access to the facility pursuant to KRS 216B.042, including the facility's patient records;

(2) Shall calculate the majority of patients based upon the number of unduplicated patients treated in a one (1) month time period; and

(3) May use data from the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program to determine if the majority of the patients of the facility's practitioners are prescribed controlled substances.

Section 7. Administration. (1) A pain management facility shall be located in a fixed site.

(2) Each pain management facility shall:

(a) Be licensed separately regardless of whether the facility is operated under the same business name or management as another facility; and

(b) Post the license conspicuously in a public area of the facility.

(3) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities within the pain management facility, including the actions of the physicians and prescribing practitioners; and

2. Compliance with federal, state and local laws and regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 et. seq.) and KRS Chapter 218A.

(b) The licensee shall establish lines of authority and designate an administrator who:

1. May serve in a dual role as the facility's medical director; and

2. Shall be principally responsible for the daily operation of the facility.

(4) Policies. The facility shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if the facility performs any functions related to the storage, handling and administration of drugs and biological; and

(g) Procedures for compliance with KRS 218A.175, which requires a pain management facility to:

1. Accept private health insurance, from an entity registered pursuant to KRS Chapter 304.17A with the Kentucky Department of Insurance, as one (1) of the facility's allowable forms of payment for goods or services provided; and

2. Accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

(5) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of services offered by the pain management facility, the facility:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(6) Personnel.

(a) Prescribers. All prescribers employed or contracted by a pain management facility shall be board certified and have a full, active, and unencumbered license to practice in the Commonwealth issued under KRS Chapter 311 or KRS Chapter 314.

(b) Medical director.

1. The facility's medical director shall:

a. Be responsible for complying with all requirements related to the licensure and operation of the facility;

b. Be physically present practicing medicine in the facility for at least fifty percent (50%) of the time that patients are present in the facility; and

c. Be board certified and have a full, active, and unencumbered license to practice medicine in the Commonwealth issued under KRS Chapter 311.

(c) Medical director's qualifications. The facility's medical director shall:

1. Hold a current subspecialty certification in pain management by a member of the American Board of Medical Specialties;

2. Hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

3. Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties;

4. Hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

5. Hold a current board certification by the American Board of Pain Medicine;

6. Hold a current board certification by the American Board of Interventional Pain Physicians;

7. Have completed an accredited fellowship in pain management; or

8. Is an owner of or practices in the specific facility applying for licensure as a pain management facility and meet the following qualifications:

a. Completed an accredited residency which included a component in the practice of pain management;

b. Practiced in the specialty of pain management during the five (5) year period preceding July 20, 2012;

c. Is eligible for and has provided the Kentucky Board of Medical Licensure and the Office of Inspector General with written verification that the facility's medical director has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

d. Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements of subparagraphs 1. through 7. of this paragraph to continue to be qualified as the facility's medical director.

(d) Within ten calendar (10) days after termination of the medical director, the facility shall notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the facility.

(e) The facility's medical director shall sign and submit the "Pain Management Facility Data Reporting Form", incorporated by reference in Section 12(1)(b) of this administrative regulation, to the cabinet within thirty (30) calendar days of the quarter ending March 31, June 30, September 30, and December 31 of each year. The medical director shall document the following on the Pain Management Facility Data Reporting Form:

1. The number of new and repeat patients seen and treated at the facility who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain;

2. The number of patients discharged due to drug abuse;

3. The number of patients discharged due to drug diversion; and

4. The number of patients treated at the facility whose domicile is located somewhere other than in Kentucky. A patient's domicile shall be the patient's fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

(f) The medical director shall, within ten (10) days after the facility hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber.

(7) Staffing. At least one (1) physician and one (1) registered nurse shall be on duty in the facility during all hours the facility is operational.

(8) Job descriptions. There shall be a written job description for

each position which shall be reviewed and revised as necessary.

(9) Personnel records. Current personnel records shall be maintained for each employee and include the following:

1. Name, address and social security number;
2. Evidence of current certification or licensure of personnel;
3. Records of training and experience;
4. Records of performance evaluation; and
5. Annual verification of certification or licensure.

(10) In-service training.

(a) All personnel shall participate in orientation and annual in-service training programs relating to their respective job activities.

(b) All licensed prescribers in a pain management facility shall comply with the professional standards established by their respective licensing boards for the completion of continuing professional education.

(11) Quality assurance program.

(a) Each pain-management facility shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;
2. Evaluates methods to improve patient care;
3. Identifies and corrects deficiencies within the facility;
4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and
5. Provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public.

(b) The medical director shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;
2. The identification of trends or patterns of incidents;
3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and
4. The documentation of these functions and periodic review no less than quarterly of such information by the designated physician or prescribing practitioner.

(12) Medical records. Each pain management facility shall maintain accurate, readily accessible, and complete medical records that conform to the professional standards established by the respective licensing board for prescribers of controlled substances in the facility.

(13) Professional standards for prescribing and dispensing controlled substances.

(a) All licensed prescribers in a pain management facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by their professional licensing boards.

(b) A representative from the Office of Inspector General shall review facility records, including the facility's patient records, to verify facility compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 which establish standards for licensees authorized to prescribe or dispense controlled substances.

Section 8. Equipment. Equipment used for direct patient care by a pain management facility shall comply with the following:

(1) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(2) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and administrative regulations; and

(3) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 9. Physical environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. An initial license to operate a pain management

facility or a new license to operate a facility upon approval of a change of location shall not be issued before the facility obtains approval from the State Fire Marshal's office.

(3) Physical location and overall environment.

(a) The facility shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom;

6. Have an administrative area, including room for storage of medical records, supplies, and equipment;

7. Have private patient examination rooms;

8. Have treatment rooms, if treatment is being provided to the patients; and

9. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the facility's medical director and the names of all physicians and prescribers practicing in the facility.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(4) Housekeeping and maintenance services.

(a) The facility shall maintain a clean and safe facility free of unpleasant odors.

(b) Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(c)1. The facility shall provide a hand washing facility in each exam room with:

a. Hot and cold water and blade type operating handles;

b. Knee or foot controls; or

c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(d) The premises shall be well kept and in good repair. Requirements shall include:

1. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(5) The facility shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;

2. Precautions against airborne transmittal of infections;

3. Work restrictions for employees with infectious diseases; and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(6) Hazardous cleaning solutions, compounds, and substances shall be:

- (a) Labeled;
- (b) Stored in closed metal containers;
- (c) Kept separate from other cleaning materials; and
- (d) Kept in a locked storage area apart from the exam room.
- (7) The facility shall be kept free from insects and rodents, and their nesting places.
- (8) Garbage and trash:
 - (a) Shall be removed from the premises regularly; and
 - (b) Containers shall be cleaned daily.
- (9) A facility shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:
 - (a) Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.
 - (b) A needle or other contaminated sharp shall not be re-capped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).
 - (c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.
 - (d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.
- (10)(a) Disposable waste shall be:
 - 1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and
 - 2. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.
- (b) The facility shall establish specific written policies regarding handling and disposal of waste material.

Section 10. Inspections. (1) The cabinet shall conduct unannounced inspections of the pain management facility no less than annually, including a review of the patient records, to ensure that the facility complies with the provisions of this administrative regulation and KRS 218A.175.

(2) A representative from the Office of Inspector General shall have access to the facility and the facility's records pursuant to KRS 216B.042.

(3) Violations.

(a) The Office of Inspector General shall notify the pain management facility in writing of a regulatory violation identified during an inspection.

(b) The facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or the medical director and shall specify:

- a. The date by which the violation shall be corrected;
- b. The specific measures utilized to correct the violation; and
- c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the facility of the decision to:

- a. Accept the plan;
- b. Not accept the plan; or
- c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2b of this paragraph shall:

- a. State the specific reasons the plan is unacceptable; and
- b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:

- a. Accept the plan;
- b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
- c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction shall be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(4) Complaints. An unannounced inspection shall be con-

ducted:

- (a) In response to a credible, relevant complaint or allegation; and
- (b) According to procedures established in this section.

Section 11. Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management Facility received if:

(a) The application is received by the cabinet after close of business on July 20, 2012;

(b) The facility fails to comply with Section 4(2) of this administrative regulation;

(c) Any person with ownership interest in the facility has had previous ownership interest in a health care facility which had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(d) An administrative sanction or criminal conviction relating to controlled substances has been imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment; or

(e) The facility fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation.

(2) If during the initial inspection of the pain management facility the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Withhold issuing a license to the facility pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process if applicable.

(3) The cabinet shall revoke a license if it finds that:

(a) There has been a substantial failure by the facility to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment;

(c) A change of ownership has occurred;

(d) The facility fails to accept private health insurance as one (1) of the facility's allowable forms of payment for goods or services provided, or the facility fails to accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian;

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation; or

(f) The facility fails to comply with Section 4(2), Section 7(6)(a),(b), or (c), or Section 7(7) of this administrative regulation.

(4) The denial or revocation of a facility's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a pain management facility's license if the cabinet has probable cause to believe that:

1. The continued operation of the facility would constitute a danger to the health, welfare, or safety of the facility's patients or of the general public; or

2. A physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(b)1. The pain management facility shall cease operating im-

mediately on the date the facility is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the facility's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of an emergency suspension shall be served on the facility by certified mail, return receipt requested, or by personal service.

(8)(a) Any facility required to comply with an emergency suspension issued under subsection (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court.

(10) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the facility's license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with the facility.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG 20:240, Application for License to Operate a Pain Management Facility", June 2012 edition; and

(b) "OIG 20:240-1, Pain Management Facility Data Reporting Form", June 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 19, 2012

FILED WITH LRC: July 20, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2012, 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 writ-

ten comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 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: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure by the Cabinet for Health and Family Services of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the operation of existing pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation also conforms to KRS 218A.175, which provides for an exemption from the physician ownership or investment requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the cabinet's licensure requirements for pain management facilities.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect those pain management facilities that meet the requirements for exemption from the physician ownership/investment requirements of KRS 218A.175.

(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: Pain management facilities exempt from the physician-ownership/investment requirements of KRS 218A.175 will be required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a pain management facility will be \$2000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity exempt from the physician-ownership requirement of HB 1 and which demonstrates compliance with this administrative regulation will be approved for licensure as a pain management facility and allowed to continue operating.

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

(a) Initially: The cost of implementing this administrative regula-

tion is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating pain management facilities, which will include initial and annual surveys conducted by at least one (1) nurse consultant inspector and one (1) pharmacist consultant, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating pain management facilities on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from cabinet-licensed pain management facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a pain management facility will be \$2000.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a pain management facility. Both the initial and annual licensure fee will be \$2000.

(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. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation relates to the licensure of pain management facilities by the Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and KRS 218A.175

3. 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 cabinet will collect an initial fee of \$2000 from each applicant for licensure as a pain management facility that is exempt from the physician-ownership/investment requirements of KRS 218A.175.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will collect an annual licensure fee of \$2000 from each licensed pain management facility that is exempt from the physician-ownership requirement of HB 1 from the 2012 Special Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (New Administrative Regulation)

907 KAR 12:010. New Supports for Community Living Waiver Service and coverage policies.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the service and coverage policies for a new version of the Supports for Community Living (SCL) waiver program and applies to SCL waiver services covered pursuant to this administrative regulation rather than SCL waiver services covered pursuant to 907 KAR 1:145. During the month of their next birthday, current SCL waiver participants will transition to the new SCL waiver program and be governed by the policies established in this administrative regulation rather than those established in 907 KAR 1:145. The SCL waiver program is federally authorized via a 1915(c) home and community based waiver which enables individuals with an intellectual or developmental disability to reside and receive services in a community setting rather than in an intermediate care facility for individuals with an intellectual or developmental disability, including a consumer directed option pursuant to KRS 205.5606.

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) "Abuse" is defined by KRS 209.020(8).

(3) "Adult day health care center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(4) "Adult foster care home" means a home:

(a) Not owned or leased by an SCL provider;

(b) In which a participant:

1. Is at least eighteen (18) years of age; and

2. Receives SCL services and resides in the family occupied (leased or owned) home; and

(c) In which the family:

1. Includes the participant in the family's household routines;

2. Provides training and supervision; and

3. Ensures that the participant's needs are met in accordance with the:

a. Participant's plan of care; and

b. Supports for Community Living Policy Manual.

(5) "Behavior intervention committee" or "BIC" means a group of individuals:

(a) Established to evaluate the technical adequacy of a proposed behavioral intervention for a participant; and

(b) Which meets in accordance with the BIC policies established in the Supports for Community Living Manual.

(6) "Blended services" means a non-duplicative combination of traditional and participant directed services:

(a) Described in Sections 4 and 5 of this administrative regulation; and

(b) Provided in accordance with a participant's approved person centered plan of care.

(7) "Board" means three (3) meals a day or other full nutritional regimen of a caregiver for the purpose of providing shared living services.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Case manager" means an individual who:

(a) Works closely with a participant to ensure that the:

1. Participant's person centered plan of care focuses on the participant's ongoing expectations and satisfaction with the participant's life; and

2. Participant maintains the freedom of choice of providers in a conflict free climate;

(b) Has:

1. A bachelor's or higher degree in a human service field from an accredited college or university; or

2. A bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability;

(c) Is a registered nurse who has at least one (1) year of experience as a professional nurse in the field of intellectual disability;

(d) Shall be supervised by a case management supervisor; and

(e) Meets all personnel and training requirements established in Section 3 of this administrative regulation.

(10) "Case manager supervisor" means an individual who:

(a) Provides professional oversight of case managers;

(b) Has:

1. A bachelor's or higher degree in a human service field from an accredited college or university; or

2. A bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability;

(c) Is a registered nurse;

(d) Has at least two (2) years of experience of case management responsibility in an organization which serves individuals with intellectual or developmental disabilities;

(e) Completes a case management supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities;

(f) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(g) Participates in six (6) hours per year of professional development or continuing education in the areas of person centered processes, supervision and mentoring of employees.

(11) "Certified nutritionist" is defined by KRS 310.005(12).

(12) "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.

(13) "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:090.

(14) "Certified social worker" is an individual who is certified in accordance with KRS 335.080.

(15) "Chemical restraint" means the use of over-the-counter or prescription medication to control a participant or participant's behavior:

(a) For the convenience of staff; or

(b) As a punishment.

(16) "Community access specialist" means an individual who:

(a) Provides support and training to a participant that empowers the participant or participant's designated representative to:

1. Participate in meaningful routines or events;

2. Hold a membership in a club, group, association, church, business, or organization in the community; and

3. Build a natural support system;

(b) Has:

1. A bachelor's degree in a human services field from an accredited college or university;

2. A bachelor's degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or

3. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis; and

(c) Meets the personnel and training requirements established in Section 3 of this administrative regulation.

(17) "Community guide" means an individual who:

(a) Has been selected by a participant to provide training, technical assistance, and support including individual budget development and implementation in aspects of participant direction; and

(b) Has:

1. A bachelor's degree in a human services field from an accredited college or university;

2. A bachelor's degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or

3. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis;

(c) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

(d) Completes a community guide training curriculum approved by DBHDID within six (6) months of being employed by the first participant supported.

(18) "Conflict free" means a participant's case manager does not work for an agency which is responsible for providing services that are not-case management services to the participant.

(19) "Controlled substance" is defined by KRS 218A.010(6).

(20) "Covered services and supports" is defined by KRS 205.5605(3).

(21) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

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

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

(24) "Designated representative" is defined by KRS 216.710(5).

(25) Developmental disability means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(26) "Direct support professional" means an individual who:

(a) Provides services to a participant in accordance with Section 4 of this administrative regulation;

(b) Has direct contact with a participant when providing services to the participant;

(c) Is at least:

1. Eighteen (18) years old and has a high school diploma or GED; or

2. Twenty-one (21) years old;

(d) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and oral instructions;

3. Perform required documentation; and

4. Participate as a member of the participant's person centered team if requested by the participant;

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care.

(27) "Direct support professional supervisor" means an individual who:

(a) Provides oversight of direct support professionals in the provision of services to participants;

(b) Is at least:

1. Eighteen (18) years old and has a high school diploma or GED; or

2. Twenty-one (21) years old;

(c) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(d) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and oral instructions;

3. Perform required documentation; and

4. Participate as a member of the participant's person centered team if requested by the participant;

(e) Has at least two (2) years of experience in providing direct support to persons with a developmental disability;

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care; and

(g) Completes a supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities.

(28) "Drug paraphernalia" is defined by KRS 218A.500(1).

(29) "Early and periodic screening, diagnostic, and treatment services" is defined by 42 U.S.C. 1396d(r).

(30) "Electronic signature" is defined by KRS 369.102(8).

(31) "Employee" means:

(a) An individual who is employed by an SCL provider; or

(b) An individual or entity who is a subcontractor for an SCL provider.

(32) "Executive director" means an individual who shall:

(a) Design, develop, and implement strategic plans for an SCL provider;

(b) Maintain responsibility for the day-to-day operation of the SCL provider organization;

(c) Have a bachelor's or higher degree from an accredited institution; or

(d) Be a registered nurse,

(e) Have at least two (2) years of administrative responsibility:

1. In an organization which served individuals with an intellectual or developmental disability; and
2. That includes experience in the execution of the overall administration of an agency including:
 - a. Development, implementation, and accountability of the agency's budget;
 - b. Development, review, and implementation of the agency's policies and procedures; and
 - c. Supervision of employees including conducting performance evaluations;
- (f) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and
- (g) If providing professional oversight or supervision of employees shall meet the supervisory qualifications specified for each service defined in Section 1 of this administrative regulation.

(33) "Exploitation" is defined by KRS 209.020(9).

(34) "Family home provider" means a home:

(a) Not owned or leased by an SCL provider;

(b) In which a participant receives SCL services and resides in the family occupied (leased or owned) home; and

(c) In which the family:

1. Includes the participant in the family's household routines;
2. Provides training and supervision; and
3. Ensures that the participant's needs are met in accordance with the:
 - a. Participant's plan of care; and
 - b. Supports for Community Living Policy Manual.

(35) "Financial management services agency" means an agency contracted by the department that manages individual participant-directed service budgets.

(36) "Functional Assessment" means an assessment performed using evidenced based tools, direct observation, and empirical measurement to obtain and identify functional relations between behavioral and environmental factors.

(37) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(38) "Group home" means a residential setting:

(a) That is licensed in accordance with 902 KAR 20:078;

(b) That is managed by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and

(c) In which no more than eight (8) participants reside.

(39) "Guardian" is defined by KRS 387.010(3) and in KRS 387.812(3). (we'll need to elaborate on how one is to know which definition applies to given circumstances).

(40) "Homicidal ideation" means thoughts about homicide which may range from vague ideas to detailed or fully formulated plans without taking action.

(41) "Human rights committee" means a group of individuals:

(a) Comprised of representatives from home and community based waiver provider agencies in the community where a participant resides;

(b) Who meet:

1. To ensure that the rights of participants are respected and protected through due process; and
2. In accordance with the Human Rights Committee requirements established in the Supports for Community Living Policy Manual.

(42) Human Services field of study means psychology, behavioral analysis, counseling, rehabilitation counseling, public health, special education, sociology, gerontology, recreational therapy, education, occupational therapy, physical therapy, speech therapy, family studies, or other degree as approved by DBHDID.

(43) "ICF-IID" means an intermediate care facility for an individual with an intellectual or a developmental disability.

(44) "Illicit substance" means:

(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels;

(b) A prohibited drug; or

(c) A prohibited substance.

(45) "Immediate family member" is defined by KRS 205.8451(3).

(46) "Impact service" means a service designed to decrease the amount of paid supports a participant requires as the participant becomes:

(a) More independent; and

(b) Less reliant on an employee.

(47) "Individualized education program" or "IEP" is defined by 34 C.F.R. 300.320.

(48) "Individual family service plan" or "IFSP" is defined by KRS 200.654(9).

(49) "Individual placement in employment services" means services provided to a participant who:

(a) Is employed by a community employer in an integrated setting;

(b) Receives minimum wage or more; and

(c) Has job responsibilities matching the employer needs with personal contributions as defined in the participant's Long-Term Employment Support Plan.

(50) "Integrated employment site" means the location of an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

(51) "Integrated setting" means a setting that:

(a) Enables a participant to interact with nondisabled persons to the fullest extent possible;

(b) Includes access to community activities and opportunities at times, frequencies, and with persons of a participant's choosing; and

(c) Affords a participant choice in the participant's daily life activities.

(52) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

- a. Communication;
- b. Self-care;
- c. Home living;
- d. Social or interpersonal skills;
- e. Use of community resources;
- f. Self-direction;
- g. Functional academic skills;
- h. Work;
- i. Leisure; or
- j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(53) "Legally responsible individual" means:

(a) An individual who has a duty under state law to care for another person; and

(b) Includes a:

1. Parent (biological, adoptive, or foster) of a minor child who provides care to the child;
2. Guardian of a minor child who provides care to the child; or
3. Spouse of a waiver participant.

(54) "Level of care determination" means a determination by the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(55) "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

(56) "Licensed dietitian" is defined by KRS 310.005(11).

(57) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(58) "Licensed practical nurse" means an individual who is currently licensed in accordance with KRS 314.051.

(59) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(60) "Licensed psychological associate" means an individual person who is currently licensed in accordance with KRS 319.064.

(61) "Licensed psychologist" means an individual who is currently licensed in accordance with KRS 319.050.

(62) "Licensed psychological practitioner" means an individual who is currently licensed in accordance with KRS 319.053.

(63) "Licensed Social Worker" means an individual who is currently licensed in accordance with KRS 335.090.

(64) "Life history" means an account of the series of events making up a participant's life including:

- (a) Developmental and historical information regarding family of origin, childhood experiences, and life events to present;
- (b) History of supports received across the life span; and
- (c) Life style practices which may lead to greater insight regarding a participant's current preferences, behavioral patterns, wants, and needs.

(65) "Long-Term Employment Support Plan" means a document:

- (a) Incorporated by reference into this administrative regulation; and
- (b) That identifies the amount and kind of support necessary for a participant to maintain employment and achieve individualized employment goals.

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

(67) "National Core Indicators" means:

(a) A voluntary effort by public developmental disabilities agencies to measure and track their own performance; and

(b) Standard measures:

1. Used across states to assess the outcomes of services provided to individuals and families; and
2. Which address key areas of concern including employment, rights, service planning, community inclusion, choice, and health and safety.

(68) "Natural supports" means assistance, relationships, or interactions that:

- (a) Allow a participant to be in the community;
- (b) Include working in a job of the participant's choice in ways similar to people without disabilities;
- (c) Are based on ordinary social relationships at work and in the community.

(69) "Neglect" is defined by KRS 209.020(16).

(70) "Occupational therapist" is defined by KRS 319A.010(3).

(71) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(72) "Office of Vocational Rehabilitation" means the agency mandated:

(a) By the Rehabilitation Act of 1973, as amended; and

(b) To provide individualized services to eligible individuals with disabilities with a substantial impediment to employment in order for the individual to gain and maintain employment.

(73) "On-site supports" means a work situation in which a supported employment specialist is physically at a job site providing job training to a participant.

(74) "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual or a developmental disability as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person centered plan of care.

(75) "Participant directed service" means an option to receive a service which is based on the principles of self-determination and person-centered thinking.

(76) "Person centered coach" means a person who:

(a) Assists a participant and the participant's person centered team in implementing and assessing the effectiveness of the participant's person centered plan of care; and

(b) Models person centered thinking; and

(c) Is responsible for training a participant, family, designated representative, natural and unpaid supports, and other members of the person centered team when barriers challenge the success of the participant in achieving his or her goals; and

(d) Has:

- 1.a. A high school diploma or GED; and
- b. Two (2) years of experience in the field of intellectual or developmental disabilities; or

2. Has completed twelve (12) hours of college coursework in a human services field;

(d) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Performs required documentation.

(77) "Person centered employment plan" means a document that identifies the unique preferences, strengths, and needs of a participant in relation to the participant's work.

(78) "Person centered plan of care" or "POC" means:

(a) The eight (8) page form incorporated by reference titled "Person Centered Plan of Care", July 2012 edition; and

(b) A written individualized plan that is developed:

1. By:

a. An SCL participant or an SCL participant's legal representative;

b. The case manager or support broker; and

c. Any other person designated by the SCL participant if the SCL participant designates any other person; and

2. Using a process that:

a. Allows the participant, or the participant's designated representative, to direct the planning and allocation of resources to meet the participant's life goals;

b. Achieves understanding of how the participant:

(i) Learns;

(ii) Makes decisions; and

(iii) Chooses to live and work in the community;

c. Discovers the participant's likes and dislikes; and

d. Empowers the participant or the participant's designated representative to create a life plan and corresponding plan of care for the participant that:

(i) Is based on the participant's preferences, ideas, and needs;

(ii) Encourages and supports the participant's long term satis-

faction;

(iii) Is supported by a short-term plan that is based on reasonable costs, given the participant's support needs;

(iv) Includes participant input;

(v) Includes a range of supports, including funded, community, and natural supports;

(vi) Includes information necessary to support a participant during times of crisis, to include crisis prevention strategies, crisis intervention strategies, and positive behavioral supports, when deemed necessary by the participant and the participant's support team;

(vii) Assists the participant in making informed choices by facilitating knowledge of and access to services and supports.

(79) "Person centered team" means a participant's designated representative and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice; and

(b) Work together to identify what roles they will assume to assist the participant in having a comfortable and fulfilled life;

(c) Include providers who receive payment for services who shall:

1. Be active contributing members of the person centered team meetings;

2. Base their input upon evidence-based information; and

3. Not request reimbursement for person centered team meetings.

(80) "Physical therapist" is defined by KRS 327.010(2).

(81) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(82) "Positive behavior support specialist" means an individual who:

(a) Provides evidence-based individualized interventions that assist a participant with acquisition or maintenance of skills for community living and behavioral intervention for the reduction of maladaptive behaviors;

(b) Has a master's degree in a behavioral science and one (1) year of experience in behavioral programming;

(c) Has at least one (1) year of direct service experience with individuals with intellectual or developmental disabilities;

(d) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Participates in at least six (6) hours per year of professional development or continuing education in the areas of psychology, behavioral supports, applied behavioral science, or school psychology.

(83) "Prohibited drugs and substances" means all drugs and substances which are illegal under KRS Chapter 218A or other statutes or administrative regulations of the Commonwealth of Kentucky.

(84) "Registered agent" means an individual meeting the requirements of KRS 14A.4-010(1)(b).

(85) "Registered office" means an office meeting the requirements of KRS 14A.4-010(1)(a).

(86) "Registered nurse" is defined by KRS 314.011(5).

(87) "Representative" is defined in KRS 205.5605(6).

(88) "Room" means for the purpose of providing shared living, the aggregate expense of housing costs including:

(a) Rent, lease, or mortgage payments;

(b) Real estate taxes;

(c) Insurance;

(d) Maintenance; and

(e) Utilities.

(89) "SCL developmental disability professional" or "SCL DDP" means an individual who:

(a) Has at least one (1) year of experience working with persons with intellectual or developmental disabilities;

(b) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(c)1. Is a doctor of medicine or osteopathy;

2. Is currently a registered nurse; or

3. Holds at least a bachelor's degree from an accredited institution in a human services field.

(90) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(91) "Segregated setting" means a congregate setting that is populated exclusively or primarily with individuals with disabilities.

(92) "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.

(93) "Shared living caregiver" means an unrelated individual who:

(a) Resides with a participant in the participant's home;

(b) Provides supervision and necessary personal assistance services as specified in the participant's person centered plan of care;

(c)1. Is at least eighteen (18) years of age and has a high school diploma or GED; or

2. Is at least twenty-one (21) years old;

(d) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand and implement written and verbal instructions; and

3. Perform required documentation; and

(f) Has been determined by the participant's person centered team to meet the following qualifications prior to being alone with the participant:

1. Demonstrate competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care; and

2. Ability to participate as a member of the participant's person centered team if requested by the participant.

(94) "Shared living service" means a participant directed service:

(a) Designed as an alternative to residential services; and

(b) Which allows a participant to live in the participant's own home with an unrelated caregiver who:

1. Resides in the same home; and

2. Provides some of the participant's supports in exchange for the caregiver's share of room and board expenses.

(95) "Speech-language pathologist" is defined by KRS 334A.020(3).

(96) "Staffed residence" means a residential setting:

(a) That is owned or leased by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and

(b) In which no more than three (3) participants reside.

(97) "Subcontractor" means an entity or an individual who:

(a) Is a currently credentialed professional or other service provider; and

(b) Has signed an agreement with a certified SCL agency to provide SCL services and supports.

(98) "Suicidal ideation" means thoughts about suicide which may range from being fleeting in nature to detailed planning.

(99) "Supported employment specialist" means an individual who:

(a) Provides ongoing support services to eligible participants in supported employment jobs;

(b)1. Has at least a bachelor's degree from an accredited college or university and one (1) year of experience in the field of developmental disabilities; or

2. Has relevant experience or credentialing that substitutes for the educational requirement stated in subparagraph 1. of this paragraph on a year-for-year basis; and

(c) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Completes the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky within six (6) months of the date the specialist begins providing SCL supported employment services.

(100) "Supported employment specialist supervisor" means an individual who:

(a) Provides professional oversight of a supported employment specialist;

(b)1. Has at least a bachelor's degree from an accredited college or university and two (2) years of experience in the field of developmental disabilities; or

2. Has relevant experience or credentialing that substitutes for the educational requirement stated in subparagraph 1. of this paragraph on a year-for-year basis; and

(c) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(d) Has successfully completed the Supported Employment Training Project Administrator Training provided by the Human Development Institute at the University of Kentucky; and

(e) Successfully completes a supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities.

(101) "Supports for community living" or "SCL" means home and community-based waiver services for an individual with an intellectual or developmental disability.

(102) "Supports intensity scale" or "SIS" means an assessment tool developed by the American Association on Intellectual and Developmental Disabilities (AAIDD) that:

(a) Measures practical support requirements of individuals with intellectual or developmental disabilities in daily living, medical, and behavioral areas; and

(b) Is administered by a trained professional in the human services field as approved by the department.

Section 2. SCL Participant Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

(a) Be placed on the SCL waiting list in accordance with Section 7 of this administrative regulation;

(b) Receive notification of potential SCL funding in accordance with Section 7 of this administrative regulation;

(c) Meet ICF-IID patient status requirements established in 907 KAR 1:022;

(d) Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(e) Upon receiving notification of potential SCL funding, submit an application packet to the department which shall contain:

1. A completed Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. The results of a physical examination that was conducted within the last twelve (12) months;

3. A life history which is less than one (1) year old;

4. A MAP-24C documenting a participant's status change.

(2)(a) To maintain eligibility as a participant:

1. A participant shall be administered a Supports Intensity Scale assessment by the department at least once every twelve (12) months;

2. A participant shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

3. An ICF-IID level of care determination shall be performed by the department at least once every twelve (12) months.

(b) The department shall:

1. Obtain the rights to use a Supports Intensity Scale; and

2. Use it in accordance with the terms and conditions required by the copyright associated with it.

(3) An SCL waiver service shall not be provided to an individual who is:

(a) Receiving a service in another 1915(c) home and community based waiver program;

(b) Receiving a duplicative service provided through another funding source; or

(c) An inpatient of an ICF-IID or other facility.

(4) The department may exclude from receiving an SCL waiver service an applicant for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-IID services.

(5)(a) Involuntary termination and loss of an SCL waiver program placement shall be:

1. In accordance with 907 KAR 1:563; and

2. Initiated if:

a. An applicant fails to access an SCL waiver service within sixty (60) days of receiving notice of potential funding without receiving an extension; or

b. A participant:

(i) Fails to access any services outlined in the participant's POC for a period greater than sixty (60) consecutive days without demonstrating good cause;

(ii) Moves to a residence outside of the Commonwealth of Kentucky;

(iii) Does not meet ICF-IID patient status criteria in accordance with 907 KAR 1:022.

(b)1. After receiving notice of an involuntary termination due to failing to access services or requesting an extension, an applicant or the applicant's designated representative shall have the burden of requesting an extension by submitting a statement to the department that:

a. Has been signed by the applicant or applicant's designated representative;

a. Explains the reason for the delay in accessing services;

b. States the steps being taken to access services; and

c. States the date that the applicant expects to begin utilizing services.

2. Upon receipt of the statement referenced in subparagraph 1. of this paragraph, the department shall grant one (1) sixty (60) day extension in writing.

(c)1. After receiving notice of an involuntary termination due to failing to access services or demonstrating good cause, a participant shall have the burden of demonstrating good cause by submitting a statement to the department that:

a. Has been signed by the participant or the participant's designated representative;

b. Explains the reason for the delay in accessing services;

c. States the steps being taken to access services; and

d. States the date that the participant expects to begin utilizing services.

2. Upon receipt of the statement referenced in subparagraph 1. of this paragraph, the department shall grant one (1) sixty (60) day extension in writing.

(6)(a) An involuntary termination of a service to a participant by an SCL provider shall require:

1. The SCL provider to:

a. Simultaneously notify in writing the participant or participant's designated representative, the participant's case manager, the department, and DBHDID at least thirty (30) days prior to the effective date of the termination;

b. Submit a MAP-24C to the department and DBHDID at the time of termination; and

2. The participant's case manager, in conjunction with the SCL provider, to:

a. Provide the participant or participant's designated representative with the name, address, and telephone number of each current SCL provider in Kentucky;

b. Provide assistance to the participant or participant's designated representative in making contact with another SCL provider;

c. Arrange transportation for a requested visit to an SCL provider site;

d. Provide a copy of pertinent information to the participant or participant's designated representative;

e. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;

f. Continue to provide supports until alternative services or another placement is secured; and

g. Provide assistance to ensure a safe and effective service transition.

(b) The notice referenced in paragraph (a)1.a. of this subsection, shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the intended action is taken; and

4. The participant's right to appeal the intended action through the provider's appeal or grievance process.

(7)(a) DBHDID shall initiate an intent to discontinue a partici-

participant's participation in the SCL waiver program if the participant or participant's designated representative submits a written notice of intent to discontinue services to:

1. The SCL provider; and
2. DBHDID.

(b) An action to terminate waiver participation shall not be initiated until thirty (30) calendar days from the date of the notice referenced in paragraph (a) of this subsection.

(c) A participant or designated representative may reconsider and revoke the notice referenced in paragraph (a) of this subsection in writing during the thirty (30) calendar day period.

Section 3. Provider Participation. (1) An SCL provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672;
- (c) 907 KAR 1:673;
- (d) 902 KAR 20:078;
- (e) The Supports for Community Living Policy Manual;
- (f) The Health Insurance Portability and Accountability Act; and
- (g) 42 U.S.C. 1320d to 1320d-8.

(2) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

(a) Successfully complete DBHDID New Provider Orientation and Medicaid provider enrollment processes;

(b) Be certified by the department prior to the initiation of a service;

(c) Be recertified at least biennially by the department;

(d) In accordance with KRS 273.182, maintain a registered agent and a registered office in Kentucky with the Office of the Secretary of State and file appropriate statement of change documentation with the filing fee with the Office of Secretary of State whenever the registered office or agent changes;

(e) Be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;

(f) Abide by the laws which govern the chosen business or tax structure of the SCL provider;

(g) Maintain policy that complies with this administrative regulation concerning the operation of the SCL provider and the health, safety, and welfare of all people supported or served by the SCL provider;

(h) Maintain an executive director who shall have the authority and responsibility for the management of the affairs of the SCL provider in accordance with written policy and procedures that comply with this administrative regulation; and

(i) Participate in the National Core Indicators' surveys and all department survey initiatives.

(3) An SCL provider shall:

(a) Ensure that SCL waiver services that are not participant directed services shall not be provided to a participant by a staff person of the SCL provider who is a legal guardian or immediate family member of the participant;

(b) Not enroll a participant whose needs the SCL provider is unable to meet;

(c) Have an follow written criteria that comply with this administrative regulation for determining the eligibility of a participant for admission to services;

(e) Document:

1. A denial for a service; and
2. The reason for the denial;

(f) Maintain documentation of its operations including:

1. A written description of available SCL waiver services;
2. A current table of organization;
3. A memorandum of understanding with all providers with whom the SCL provider shares person centered plans of care;
4. Information regarding participants' satisfaction with services and the utilization of that information;

5. A quality improvement plan that includes updated findings and corrective actions as a result of department and case management quality assurance monitoring;

6. Evidence of continuous improvement of utilizing best practice standards toward meeting SCL program goals and the critical strategic

areas identified in the annual report released by the Kentucky National Core Indicators available at the Kentucky National Core Indicators website of <http://www.nationalcoreindicators.org/states/KY/>;

7. A written plan of how the SCL provider shall participate in the:

a. Human Rights Committee in the area in which the SCL provider is located; and

b. Behavior Intervention Committee in the area in which the SCL provider is located;

(g) Maintain accurate fiscal information including documentation of revenues and expenses;

(h) Maintain a written policy that room and board charges shall be determined as the lesser of:

1. Seventy (70) percent of the federal benefits rate as determined by the United States Social Security Administration; or

2. An amortized amount determined by the SCL provider based on the participants being served by the SCL provider sharing the following on an equal basis:

a. Lease, mortgage payment, or market rent;

b. Utilities and basic television services;

c. The costs of food and household goods based upon the number of people, including participants and staff, in the home during waking hours; and

d. The costs of residential telephone services on the basis of the SCL provider paying fifty (50) percent of the costs (excluding long distance telephone costs) and the participants sharing the burden of the remaining costs;

(i) Meet the following requirements if responsible for the management of a participant's funds:

1. Separate accounting shall be maintained for each participant or for the participant's interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the participant or the participant's designated representative on a quarterly basis; and

3. The participant or the participant's designated representative shall be notified if a balance is accrued that may affect Medicaid eligibility;

(j) Have a written statement of its mission and values which shall:

1. Support participant empowerment and informed decision-making;

2. Support and assist participants to form and remain connected to natural support networks;

3. Promote participant dignity and self-worth.

4. Support team meetings which help ensure and promote the participant's right to choice, inclusion, employment, growth, and privacy;

5. Foster a restraint-free environment where the use of mechanical restraints, seclusion, manual restraints including any manner of prone or supine restraint, or chemical restraints shall be prohibited; and

6. Support the SCL program goal that all participants:

a. Receive person centered waiver services;

b. Are safe, healthy, and respected in the participant's community;

c. Live in the community with effective, individualized assistance, and

d. Enjoy living and working in the participant's community;

(k) Have written policy and procedures for communication and interaction with a participant, family, or participant's designated representative which shall include:

1. A timely response to an inquiry;

2. The opportunity for interaction by direct support professionals;

3. Prompt notification of any unusual occurrence;

4. Visitation with the participant at a reasonable time, without prior notice, and with due regard for the participant's right of privacy;

5. Involvement in decision making regarding the selection and direction of the person-centered service provided;

6. Consideration of the cultural, educational, language, and socioeconomic characteristics of the participant and family being supported;

- (l) Ensure the rights of a participant by:
 1. Providing conflict free services and supports that are person centered;
 2. Making available a description of the rights and means by which the rights can be exercised and supported including the right to:
 - a. Live and work in an integrated setting;
 - b. Time, space, and opportunity for personal privacy;
 - c. Communicate, associate, and meet privately with the person of choice;
 - d. Send and receive unopened mail;
 - e. Retain and use personal possessions including clothing and personal articles;
 - f. Private, accessible use of a cell phone or telephone;
 3. Having a grievance and appeals system that includes an external mechanism for review of complaints;
 4. Ensuring access to participation in an area human rights committee in accordance with the human rights committee policies established in the Supports for Community Living Policy Manual;
 - (m) Maintain fiscal records, service records, investigations, medication error logs, and incident reports for a minimum of six (6) years from the date that:
 1. A covered service is provided; or
 2. The participant turns twenty-one (21) years of age, if the participant is under the age of twenty-one (21);
 - (n) Make available all records, internal investigations, and incident reports:
 1. To the:
 - a. Department;
 - b. DBHDID;
 - c. Office of Inspector General or its designee;
 - d. General Accounting Office or its designee;
 - e. Office of the Auditor of Public Accounts or its designee;
 - f. Office of the Attorney General or its designee;
 - g. DCBS; or
 - h. Centers for Medicare and Medicaid Services;
 2. Pertaining to a participant to:
 - a. The participant, the participant's designated representative, or the participant's case manager upon request; or
 - b. Protection and Advocacy upon written request;
 - (o) Cooperate with monitoring visits from monitoring agents;
 - (p) Maintain a record for each participant served that shall:
 1. Be recorded in a readable print format in ink or typed print;
 2. Be free from correction fluid or correction tape;
 3. Have a strike through each error that is initialed and dated;
 4. Contain no blank lines in between each entry; and
 5. Document late entries;
 6. Contain all information necessary to support person centered practices;
 7. Be cumulative;
 8. Be readily available;
 9. Contain documentation which meets the requirements of Section 4 of this administrative regulation;
 10. Contain the following:
 - a. The participant summary sheet;
 - b. The participant's name, Social Security number, and Medicaid identification number;
 - c. The Supports Intensity Scale Assessment Form completed at least annually;
 - d. The results of a health risk screening performed using a Health Risk Screening Tool which shall:
 - (i) Be administered by trained personnel approved by DBHDID at least annually and updated as needed;
 - (ii) Assist in determining a participant's areas of vulnerability for a potential health risk;
 - (iii) Be provided in accordance with the health risk screening tool requirements established in the Supports for Community Living Policy Manual;
 - e. The current person centered plan of care;
 - f. The goals and objectives identified by the participant and the participant's person centered team which facilitates achievement of the participant's chosen outcomes as identified in the participant's POC;
 - g. A list containing emergency contact telephone numbers;
 - h. The participant's history of allergies with appropriate allergy alerts;
 - i. The participant's medication record, including a copy of the prescription or the signed physician's order and the medication administration record (MAR) if medication is administered at the service site;
 - j. A recognizable photograph of the participant;
 - k. Legally adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;
 - l. The participant's individual educational plan or individual family service plan, if applicable;
 - m. The participant's life history updated at least annually;
 - n. The results of an annual physical exam;
 - o. The results of an annual dental exam;
 - p. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;
 - q. A psychological evaluation;
 - r. A current level of care certification;
 - s. The prior authorization notifications in the case management and residential record; and
 - t. Incident reports, if any exist;
 11. Be maintained by the provider in a manner that:
 - a. Ensures the confidentiality of the participant's record and other personal information; and
 - b. Allows the participant or designated representative to determine when to share the information in accordance with law;
 12. Be safe from loss, destruction, or use by an unauthorized person ensured by the provider; and
 13. Have a corresponding legend which the provider shall make readily accessible;
 - (q) Ensure that an employee or volunteer:
 1. Behave in a legal and ethical manner in providing a service;
 2. Have a valid Social Security number or valid work permit if not a citizen of the United States of America;
 3. If responsible for driving participants during a service delivery, have a valid Kentucky driver's license with proof of current mandatory liability insurance;
 - (r) Ensure that an employee or volunteer:
 1. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire or date the individual began serving as a volunteer; or
 2. Who tests positive for TB or has a history of positive TB skin tests:
 - a. Shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and
 - b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer he or she shall be administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease; and
 - (s) Maintain documentation:
 1. Of an annual TB risk assessment or negative TB test for each employee who performs direct support or a supervisory function; or
 2. Annually for each employee with a positive TB test that ensures no active disease symptoms are present;
 - (t) Provide a written job description for each staff person that describes the required qualifications, duties, and responsibilities for the person's job;
 - (u) Maintain an employee record for each employee that includes:
 1. The employee's experience;
 2. The employee's training;
 3. Documented competency of the employee;
 4. Evidence of the employee's current licensure or registration if required by law; and
 5. An annual evaluation of the employee's performance;
 - (v) Require a background check:
 1. And drug testing for each employee who is paid with funds administered by the department and who:

- a. Provides support to a participant who utilizes SCL services; or
- b. Manages funds or services on behalf of a participant who utilizes SCL services; or
- 2. For a volunteer recruited and placed by an agency or provider who has the potential to interact with a participant;
 - (w) Ensure that a volunteer placed by an agency or provider does not have unsupervised interaction with a participant;
 - (x) For a potential employee or volunteer obtain:
 - 1. The results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism;
 - 2. The results of a nurse aid abuse registry check as described in 906 KAR 1:100 or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; or
 - 3. Within thirty (30) days of the date of hire or initial date of volunteerism, the results of a central registry check as described in 922 KAR 1:470 or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism;
 - (y) For each potential employee obtain negative results of drug testing for illicit or prohibited drugs;
 - (z) On an annual basis:
 - 1. Randomly select and perform all required criminal history background checks, nurse aid abuse registry checks, and central registry checks, pursuant to Section 3 of this administrative regulation, of at least twenty-five (25) percent of employees; and
 - 2. Conduct drug testing of at least five (5) percent of employees;
 - (aa) Not employ, subcontract with, or place an individual as a volunteer who:
 - 1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);
 - 2. Has a prior felony conviction, plea bargain, amended plea bargain, or diversion program that has not been completed;
 - 3. Has a drug related conviction within the past five (5) years;
 - 4. Has a positive drug test for prohibited drugs;
 - 5. Has a conviction of abuse, neglect, or exploitation;
 - 6. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or
 - 7. Is listed on the nurse aide abuse registry;
 - (bb) Not permit an employee to transport a participant if the individual has a driving under the influence conviction, amended plea bargain, or diversion during the past year;
 - (cc) Maintain adequate staffing and supervision to implement services being billed;
 - (dd) Establish written guidelines that address and ensure the health, safety, and welfare of a participant, which shall include:
 - 1. A basic infection control plan that includes:
 - a. Universal precautions;
 - b. Hand washing;
 - c. Proper disposal of biohazards and sharp instruments; and
 - d. Management of common illness likely to be emergent in the particular service setting;
 - 2. Effective cleaning and maintenance procedures sufficient to maintain a sanitary and comfortable environment that prevents the development and transmission of infection;
 - 3. Ensuring that each site operated by the provider is equipped with:
 - a. An operational smoke detector placed in all bedrooms and other strategic locations; and
 - b. At least two (2) correctly charged fire extinguishers placed in strategic locations, at least one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
 - 4. Ensuring the availability of an ample supply of hot and cold running water with the water temperature complying with the safety limits established in the participant's POC;
 - 5. Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:
 - a. Safe storage and use; and
 - b. That firearms and ammunition are permitted:
 - (i) Only in nonprovider owned or leased residences; and

- (ii) Only if stored separately and under double lock;
- 6. Establishing written procedures concerning the safe storage of common household items;
- 7. Ensuring that the nutritional needs of a participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
- 8. Ensuring that an adequate and nutritious food supply is maintained as needed by the participant;
- 9. Ensuring that:
 - a. Each case manager or employee who will be administering medication, unless the employee is a currently licensed or registered nurse, has:
 - (i) Specific training provided by a registered nurse per a DBHDID medication administration approved curriculum; and
 - (ii) Documented competency on medication administration, medication cause and effect, and proper administration and storage of medication; and
 - b. An individual administering medication documents all medication administered, including self-administered and over-the-counter drugs, on a medication administration record, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:
 - (i) Be kept in a locked container;
 - (ii) If a controlled substance, be kept under double lock with a documented medication count performed every shift;
 - (iii) Be carried in a proper container labeled with medication and dosage pursuant to KRS 315.010(8) and 217.182(6);
 - (iv) Accompany and be administered to a participant at a program site other than the participant's residence if necessary; and
 - (v) Be documented on a medication administration record and properly disposed of, if discontinued; and
- 10. Adhering to policies and procedures for ongoing monitoring of medication administration;
 - (ee) Establish and follow written guidelines for handling an emergency or a disaster which shall:
 - 1. Be readily accessible on site;
 - 2. Include instruction for notification procedures and the use of alarm and signal systems to alert a participant according to the participant's disability;
 - 3. Include documentation of training of staff and participants on emergency disaster drills;
 - 4. Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and, for a participant who receives residential support services, is scheduled to include a time when the participant is asleep; and
 - 5. Mandate that the result of an evacuation drill be evaluated and if not successfully completed within three (3) minutes shall modify staffing support as necessary and repeat the evacuation drill within seven (7) days;
 - (ff) Provide orientation for each new employee which shall include the mission, goals, organization, and practices, policies, and procedures of the agency;
 - (gg) 1. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units of competency-based training to each employee and subcontractor to teach and enhance skills related to the performance of duties, except for a case management supervisor or positive behavior support specialist;
 - 2. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units in the area of person centered processes, supervision, or mentoring to each employee who is a case management supervisor; or
 - 3. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units in the area of psychology, behavioral supports, applied behavioral science, or school psychology to each employee who is a positive behavior support specialist;
 - (hh) Require documentation of all face-to-face training which shall include:
 - 1. The type of training provided;
 - 2. The name and title of the trainer;
 - 3. The training objectives;

4. The length of the training;
5. The date of completion;
6. The signature of the trainee verifying completion; and
7. Verification of competency of the trainee as demonstrated by post-training assessments, competency checklists, or post-training observations and evaluations;

(ii) Require documentation of web-based training which shall include:

1. Transcripts verifying successful completion of training objectives with scores of eighty-five (85) percent or higher; and
2. Competency checklist listing date of completion, signature of evaluator, and signature of trainee for all Phase I or Phase II Kentucky College of Direct Support modules within the timeframe specified;

(jj) Ensure that each case manager, employee prior to independent functioning, successfully completes training which shall include:

1. First aid, which shall be provided by a certified trainer with a nationally-accredited organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;

2. Cardiopulmonary resuscitation which shall be provided by a certified trainer with a nationally-accredited organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;

3. Department of Behavioral Health, Developmental and Intellectual Disabilities' Crisis Prevention and Intervention Training;

- 4a. Successful completion of all Kentucky College of Direct Support Phase I training modules; and

- b. Training in Kentucky College of Direct Support Phase I training modules shall be paid for and facilitated by DBHDID; and

5. Individualized instruction about the person centered POC of the participant to whom the trainee provides supports; and

6. Verification of trainee competency as demonstrated by pre- and post-training assessments, competency checklists, and post-training observations or evaluations;

(kk)1. Ensure that all case managers, employees, or sub-contractors, unless the case manager, employee is a licensed professional providing a service governed by the licensure of the individual's profession, complete Kentucky College of Direct Support Phase II training modules, no later than six (6) months from the date of employment or when the individual began providing services; and

2. Kentucky College of Direct Support Phase II module training shall be paid for and facilitated by DBHDID; and

(ll) Ensure that each case manager complete DBHDID approved case management training after three (3) months but within nine (9) months from the date of hire; and

(mm) Ensure that each case manager employed prior to the effective date of this administrative regulation completes the DBHDID case management training within one (1) year of this administrative regulation's effective date; and

(nn) Ensure that each adult family member residing in a level II residential adult foster care home or family home provider who may be left alone with the participant will receive training regarding the individualized needs of the participant from the case manager.

(4) DBHDID shall:

(a) Obtain the rights to use:

1. The Health Risk Screening Tool required to be used by an SCL waiver provider pursuant to this administrative regulation; or

2. The Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation;

(b) Facilitate access to the:

1. Health Risk Screening Tool required to be used by an SCL waiver provider pursuant to this administrative regulation; or

2. Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation.

(5) An SCL provider employee or volunteer shall:

- (a) Not manufacture, distribute, dispense, be under the influence of, purchase, possess, use, or attempt to purchase or obtain,

sell, or transfer any of the following in the workplace or while performing work duties:

1. An alcoholic beverage;
2. A controlled substance;
3. An illicit drug;
4. A prohibited drug or prohibited substance;
5. Drug paraphernalia;
6. A substance that resembles a controlled substance, if there is evidence that the individual intended to pass off the item as a controlled substance; and

(b) Not possess a prescription drug for the purpose of selling or distributing it.

Section 4. Covered Services. (1)(a) An SCL waiver service shall:

1. Be prior authorized by the department;
2. Be provided to a participant pursuant to the participant's person centered POC by an individual who meet the requirements established in 3 of this regulation; and

3. Be available through participant directed services for a participant who chooses this option.

(b) Any combination of day training, community access, personal assistance, or supported employment shall not exceed sixteen (16) hours per day.

(2) SCL covered services include:

- (a) Case management;
- (b) Community access services;
- (c) Community guide services;
- (d) Community transition services;
- (e) Consultative clinical and therapeutic services;
- (f) Day training;
- (g) Environmental accessibility adaptation services;
- (h) Goods and services;
- (i) Natural supports training;
- (j) Occupational therapy;
- (k) Person centered coaching;
- (l) Personal assistance services;
- (m) Physical therapy;
- (n) Positive behavior supports;
- (o) Residential support services;
- (p) Respite;
- (q) Shared living;
- (r) Specialized medical equipment and supplies;
- (s) Speech therapy;
- (t) Supported employment;
- (u) Transportation services; or
- (v) Vehicle adaptation services.

(3) Case management shall:

- (a) Not include any other SCL waiver service;
- (b) Be provided by a case manager who:

1. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Shall not provide any other SCL waiver service to the participant receiving case management from the case manager;

(c) Be conflict free unless the department grants an exemption to the conflict free requirement in accordance with subsection (4)(b) of this section;

(d) Include initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

(e) Include assisting a participant in the identification, coordination, and arrangement of the person centered team and person centered team meetings;

(f) Include facilitating person centered team meetings that assist a participant to develop, update, and monitor the POC which shall:

1. Reflect the principles and tools of self-determination to assist a participant in creating supports and services:

a. Designed to meet the needs of the participant; and

b. That promote choice, community experiences, employment, and personal satisfaction;

2. Be developed and prior authorized within thirty (30) days of the initiation of a service;

3. Include the objectives and interventions, goals, and out-

comes that meet the participant's identified needs from all assessments and person centered team members;

4. Include documented participation in the development of the POC by the participant, participant's designated representative, family members, other providers, or other people the participant has identified as important in the participant's life and as members of the person centered team;

5. Include information about:

a. What is important to the participant;

b. What the person centered plan will help the participant accomplish;

c. What people like and admire about the participant;

d. The characteristics of people providing support that are important to and for the participant;

e. What people need to know or do to help the participant stay healthy and safe;

f. Instructions for those who support the participant;

g. The barriers that block the participant's progress towards the participant's goals;

h. What action steps are needed to ensure that a participant's goals are reached;

i. Who is responsible for each action; and

j. When the action is anticipated to be completed;

(g) Include assisting a participant to gain access to and maintain employment, membership in community clubs, groups, activities and opportunities at the times, frequencies, and with the people the participant chooses;

(h) Include coordination and monitoring of all waiver and non-waiver services which shall include:

1. Monthly face-to-face contacts with the participant to determine if the participant's needs are being met which shall include:

a. Contact at a location where the participant is engaged in services; and

b. Utilization of a DBHDID-approved monitoring tool to:

(i) Identify that person centered practices are demonstrated by the service provider;

(ii) Ensure that the participant's health, safety, and welfare is not at risk;

(iii) Gather data regarding the participant's satisfaction with their services for use in guiding the person centered planning process; and

(iv) Generate monthly summary notes;

2. Responsibility to initiate a person centered team meeting and receive prior authorization within fourteen (14) days of a contact visit if the results of a monthly contact visit indicate that different or additional services or other changes in the participant's POC are required to meet the participant's needs;

3. Assistance with participant directed services which shall include:

a. Assisting the participant in identifying, if necessary, a community guide and a representative who shall work with the participant on the development of a POC, budget, and emergency back-up plan;

b. Assisting the participant in recruiting and managing employees;

c. Assigning modules within the Kentucky College of Direct Supports for training purposes and assisting the participant, the community guide, or the representative in monitoring the completion of training within timeframes specified in Section 5 of this administrative regulation; and

d. Monitoring the provision of services and submission of required documentation to the agency providing financial management services;

4. Authority to require immediate remediation of identified deficiencies that impact the health, safety, and welfare of a participant;

(i) Include assisting a participant in planning resource use and assuring protection of resources to include:

a. Clearly outlining the participant's insurance options and availability; and

b. Exploring the potential availability of other resources and social service programs for which the participant may qualify;

(j) Include ensuring that notification with the MAP-24C occurs to the local DCBS office, the department, and DBHDID if a participant is:

1. Terminated from the SCL waiver program;

2. Admitted to an ICF-IID;

3. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community based waiver program; or

6. Relocated to a different address;

(k) Include monitoring to ensure that services continue if a participant has been terminated from any service until an alternate provider, if needed, has been chosen by the participant and services have been approved;

(l) Include providing a participant and the participant's team members twenty-four (24) hour telephone access to a case management staff person; and

(m) Include documentation of services by:

1. A monthly DBHDID approved person centered monitoring tool; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note;

f. The date the note was generated; and

(n) Include person centered team meetings which shall not constitute the required monthly face-to-face visit with a participant;

(o) Include the case manager being responsible for providing information about participant directed services:

1. At the time the initial POC is developed; and

2. At least annually thereafter and upon inquiry from the participant or participant's designated representative; and

(p) Include the case manager supervisor performing supervision duties:

1. As outlined in Supports for Community Living Policy Manual; and

2. In accordance with a DBHDID approved case manager supervisor training.

(4)(a) If a case management service is approved to be provided despite not being conflict free, the case management provider shall document and demonstrate that the participant:

1. Receives the same level of advocacy; and

2. Exercises free choice of providers and services.

(b) An exemption to the conflict free requirement shall be granted if:

1. A participant requests the exemption; and

2. The participant's case manager provides documentation to DBHDID, in accordance with the Supports for Community Living Policy Manual, that:

a. Provides evidence that there is a lack of a qualified case manager within thirty (30) minutes of the participant's residence; and

b. There is a relationship of at least one (1) year between the participant and the participant's case manager.

(c) A request to receive a case management service that is not conflict free shall accompany each prior authorization request for the case management service.

(d) One (1) unit of a case management service shall equal one (1) month.

(e) A provider shall bill for a case management service in accordance with 907 KAR 12:020.

(5) A community access service:

(a) Shall be provided by a community access specialist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

(b) Shall be designed to support a participant to participate in meaningful routines, events, and activities through various community organizations; and

(c) Shall be designed to empower a participant in developing natural supports;

(d) May be participant directed if so chosen by the participant; and

(e) Shall stress training that empowers a participant in acquiring, practicing, utilizing, and improving skills related to:

1. Connecting with others;
2. Independent functioning;
3. Self advocacy;
4. Socialization;
5. Community participation;
6. Personal responsibility;
7. Financial responsibility; and
8. Other skills related to optimal well-being as defined in the participant's POC;

(f) Shall be designed to result in an increased ability to develop natural supports and access community resources including educational, recreational, religious, civic, or volunteer opportunities with an outcome of:

1. Less reliance on formal supports; and
2. Greater reliance on natural or unpaid supports as established in the participant's POC;

(g) Shall have an emphasis on the development of personal social networks, membership opportunities, friendships, and relationships for the participant as established in the participant's POC;

(h) Shall be provided outside the participant's home or family home provider and may occur during the day, in the evening, and on weekends;

(i) May not duplicate residential, day training services, or authorized therapies;

(j)a. Shall be provided to a participant with a one (1) to one (1) staff to participant ratio; or

b. May include a friend invited by the participant, for a ratio of one (1) staff to no more than two (2) participants according to the participant's POC;

(k) Shall occur in an integrated community setting;

(l) Shall be an impact service and the participant's POC shall define steps to decrease the provision of the service as the participant becomes more independent in accessing and becoming part of the community;

(m) Shall be documented by:

1. A note documenting each contact which shall include:
 - a. A full description of each service rendered;
 - b. Evidence of training or service to support outcomes designated in the participant's POC;
 - c. The date of the service;
 - d. The location of the service;
 - e. The beginning and ending times of the service;
 - f. The signature and title of the individual providing the service;

and

g. The date the entry was made in the record; and

2. A monthly summary note which shall include:

- a. The month and year for the time period the note covers;
- b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. Projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the community access specialist completing the note; and

f. The date the note was written; and

(n) Shall not exceed 160 fifteen (15) minute units per week alone or in combination with community access group services.

(6)(a) A community guide service:

1. Shall be provided by a community guide who meets the personnel and training requirements established in Section 3 of this administrative regulation;

2. Shall be designed to empower a participant to define and direct the participant's services;

3. Shall only be for a participant who chooses participant directed supports for some or all of the participant's support services;

4. Shall include:

a. Direct assistance to a participant in meeting his or her participant directed responsibilities;

b. Information and assistance that help the participant in:

- (i) Problem solving;
- (ii) Decision making;
- (iii) Developing supportive community relationships; and

(iv) Accessing resources that promotes implementation of the participant's POC; and

c. Information to ensure that the participant understands the responsibilities involved with directing the participant's services.

5. Shall be documented by:

a. A note documenting each contact which shall include:

- (i) A full description of each service rendered;
- (ii) The date of the service;
- (iii) The location of the service;
- (iv) The beginning and ending times of the service;
- (v) The signature and title of the individual providing the service; and

(vi) The date the entry was made in the record; and

b. A completed monthly summary note which shall include:

- (i) The month and year for the time period the note covers;
- (ii) An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;
- (iii) The signature and title of the community guide completing the note; and

(iv) The date the note was written; and

6. Shall be limited to 576 fifteen (15) minute units per year.

(b)1. A participant and the participant's person centered team shall determine the community guide services to be received; and

2. The community guide services to be received by a participant shall be specified in the participant's POC.

(c) If needed, directed assistance provided by a community guide:

1. Shall be based on the needs of the participant; and

2. May include assistance with:

a. Recruiting, hiring, training, managing, evaluating, and changing employees;

b. Scheduling and outlining the duties of employees;

c. Developing and managing the individual budget;

d. Understanding provider qualifications;

e. Recordkeeping and other program requirements.

(d) A community guide service shall not duplicate a case management service.

(e) A community guide providing community guide services to a participant shall not provide other direct waiver services to any participant.

(f) A community guide shall not be employed by an agency that provides other direct waiver services to the participant receiving community guide services from the community guide.

(g) An individual serving as a representative for a participant receiving participant directed services shall not be a community guide for that participant.

(h) Kentucky College of Direct Support module training assigned to be completed by a community guide shall be paid for and facilitated by DBHDID.

(7) Community transition services:

(a) Shall be non-recurring set-up expenses for a participant who is transitioning from an institutional or other provider-operated living arrangement to a living arrangement in a private residence where the participant is directly responsible for his or her own living expenses;

(b) Shall be expenses that are necessary to enable a participant to establish a basic household that do not constitute room and board;

(c) May include:

1. A security deposit that is required to obtain a lease on an apartment or home;

2. An essential household furnishings or moving expense required to occupy and use a community domicile, including furniture, window coverings, food preparation items, or bed or bath linens;

3. A one (1) time set-up fee or deposit for utility or service access, including telephone, electricity, heating, or water;

4. A service necessary for the participant's health and safety including pest eradication or one (1) time cleaning prior to occupancy;

5. A necessary home accessibility adaptation;

6. An activity to assess a need and arrange for and procure needed resources; and

7. Caregiver training;

- (d) Shall be:
 - 1. Furnished only:
 - a. To the extent that the service is reasonable and necessary;
 - b. As clearly identified in the participant's POC; and
 - c. If the service cannot be obtained from other sources;
 - (e) Shall not include:
 - 1. Monthly rental or mortgage expense;
 - 2. Food;
 - 3. Regular utility charges;
 - 4. Household appliances or items that are intended for purely diversional or recreational purposes; or
 - 5. Furnishings for living arrangements that are owned or leased by an SCL provider;
 - (f) Shall be coordinated and documented by the participant's case manager by:
 - 1. Description or itemized line item of purchase and cost;
 - 2. A receipt for a procurement including date of purchase;
 - 3. The signature and title of the case manager; and
 - 4. The date the entry was made in the record.
 - (g) Shall not exceed \$2,000 per qualified transition.
 - (8) A consultative clinical and therapeutic service shall:
 - (a) Be provided by a:
 - 1. Certified nutritionist who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 2. Licensed dietitian who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 3. Licensed family and marriage therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 4. Licensed practical nurse who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 5. Licensed professional clinical counselor who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 6. Licensed psychological associate who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 7. Licensed psychologist who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 8. Licensed psychological practitioner who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - 9. Licensed social worker who meets the personnel and training requirements established in Section 3 of this administrative regulation; or
 - 10. Positive behavior support specialist who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - (b) Include:
 - 1. Professional consultation, evaluation and assessment of the participant, the environment and the system of support and written summary of findings and recommendations for the participant and the participant's person center team;
 - 2. Providing treatment that is:
 - a. Consistent with assessment results and diagnosis;
 - b. Evidence based or current best practice; and
 - c. Encompasses psychological treatment or counseling as indicated by the condition of the participant;
 - 3. Coordinating program wide support, as needed, that addresses the assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;
 - 4. Participating in developing and revising, as needed, home treatment or support plans as components of a participant's POC;
 - 5. Providing training and technical assistance to carry out recommendations and plans which shall occur within the settings in which the recommendations, home treatment, or support plans are to be carried out;
 - 6. Monitoring:
 - a. Of the fidelity of data reporting and participant's POC im-

- plementation;
 - b. Of the effectiveness of the participant's POC;
 - c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and
 - d. Which shall be conducted:
 - (i) In the settings where the participant's POC is implemented; and
 - (ii) Through discussions and observations of people implementing the participant's POC; and
 - (iii) Through reporting data;
- 7. A functional assessment which shall:
 - a. Be conducted by a:
 - (i) Licensed psychologist who meets the personnel and training requirements established in Section 3 of this administrative regulation;
 - (ii) Certified psychologist with autonomous functioning who meets the personnel and training requirements established in Section 3 of this administrative regulation; or
 - (iii) Positive behavior support specialist who meets the personnel and training requirements established in Section 3 of this administrative regulation; and
 - (b) Include all functional assessment components specified in the Supports for Community Living Policy Manual;
- 8. Documentation of a service by:
 - a. A note documenting each contact which shall include:
 - (i) A full description of each service rendered;
 - (ii) The date of the service;
 - (iii) The location of the service;
 - (iv) The beginning and end times of the service;
 - (v) The signature and title of the professional providing the service;
 - (vi) The date the entry was made in the record;
 - b. A completed monthly summary note which shall include:
 - (i) The month and year for the period covered by the note;
 - (ii) An analysis of the efficacy of the service providing including recommendations and identification of additional support needs if needed;
 - (iii) The signature and title of the professional completing the note;
 - (iv) The date the note was written; and
- (c) Not exceed 160 fifteen (15) minute units per year.
- (9) Day training:
 - (a) Shall be provided by a direct support professional;
 - (b) Shall include:
 - 1. Providing regularly scheduled activities in a non-residential setting that are designed to foster the acquisition of skills, build positive social behavior and interpersonal competence, foster greater independence and personal choice; and
 - 2. Career planning activities to develop experiential learning opportunities and career options consistent with the participant's skills and interests that:
 - a. Are person centered and designed to support employment related goals; and
 - b. Directly relate to personally chosen outcomes by the participant which shall be documented in the participant's POC; and
 - c. Are time limited;
 - 3. Activities and environments that:
 - a. Are not diversional in nature;
 - b. Provide active training or skill development designed to prepare a participant to transition from school to adult responsibilities, community integration, and work; and
 - c. Include:
 - (i) Skill development to communicate effectively with supervisors, co-workers, and customers;
 - (ii) Generally accepted community workplace conduct and dress;
 - (iii) Workplace problem solving skills and strategies;
 - (iv) General workplace safety; or
 - (v) Mobility training.
- 4. Activities that:
 - a. Occur over a defined period of time;
 - b. Occur in a variety of settings in the community and shall not be limited to fixed-site facilities;
 - c. Coordinate with any needed therapies in the participant's

POC;

d. Result in an outcome that identifies a career direction and plan used to guide activities that result in the participant's achievement of competitive, integrated employment; and

e. Shall not be reimbursable if they are for the primary purpose of producing goods or performing services in a segregated setting where the participant is earning less than the customary wage and level of benefits paid by an employer for the same or similar work performed by individuals without disabilities;

5. Supported retirement activities including:

a. Altering schedules to allow for more rest time throughout the day; or

b. Support to participate in hobbies, clubs, or other senior-related activities in the participant's community; or

6. For a participant with a degenerative condition, training and supports designed to maintain skills and functioning and to prevent or slow regression, rather than acquiring new skills or improving existing skills;

(c) Shall, if provided in an adult day health care center, only be available for a participant who:

1. Is at least twenty-one (21) years of age; and

2. Requires skilled nursing services or nursing supervision in a licensed adult day health care center as outlined in the participant's POC;

(d) May be participant directed;

(e) Shall include required informational sessions sponsored by the provider at least annually for the participant regarding employment services and arrangement of opportunities for the participant to explore supported employment and other customized employment opportunities in the community;

(f) Shall include documentation that shall be:

1. A note for each contact which shall include:

a. A full description of each service rendered;

b. The date of the service;

c. The location of the service;

d. The beginning and ending times of the service;

e. The signature and title of the individual providing the service;

and

f. The date the entry was made in the record; and

2. A completed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;

c. The signature and title of the individual completing the note;

and

d. The date the note was written; and

(g) Shall be limited to:

1. Five (5) days per week excluding weekends; and

2. 160 fifteen (15) minute units per week for day training alone or in combination with any supported employment service.

(10)(a) An environmental accessibility adaptation service:

1. Shall be:

a. Designed to enable participants to interact more independently with their environment thereby enhancing their quality of life and reducing their dependence on physical support from others; and

b. A physical adaptation to a participant's or family's home which shall be:

(i) Necessary to ensure the health, welfare, and safety of the participant; or

(ii) Enable the participant to function with greater independence in the home and without which the participant would require institutionalization;

2. May include the following if necessary for the welfare of a participant:

a. Installation of a ramp or grab-bar;

b. Widening of a doorway;

c. Modification of a bathroom facility; or

d. Installation of a specialized electric and plumbing system which shall be necessary to accommodate the medical equipment or supplies necessary for the welfare of the participant;

3. Shall not include:

a. An adaptation or improvement to a home which is not of direct medical or remedial benefit to a participant;

b. An adaptation that adds to the total square footage of a home except when necessary to complete an adaptation; and

c. An adaptation to a provider-owned residence;

4. Shall be provided:

a. In accordance with applicable state and local building codes; and

b. By a vendor who shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;

5. Shall not be provided by a family member who resides in the same house as the participant;

6. Shall be coordinated and documented by a case manager by:

a. A description of adaptation purchased;

b. A receipts for every adaptation made which shall include

the:

(i) Date of purchase;

(ii) Description of the item;

(iii) quantity and per unit price; and

(iv) Total amount of the purchase;

c. The signature and title of the case manager; and

d. The date the entry was made in the record; and

7. Shall be limited to \$8,000 per lifetime.

(b) A home accessibility modification shall not be furnished to a participant who receives residential habilitation services except when the services are furnished in the participant's own home.

(c) A request shall be documented in a participant's POC and include cost of adaptations.

(11)(a) Goods and services:

1. Shall be services, equipment, or supplies that are individualized to a participant who chooses to participant directed services;

2. Shall be utilized to reduce the need for personal care or to enhance independence within a participant's the home or community;

3. Shall not be a good or service available to a recipient outside of the department's SCL waiver program;

4. Shall meet the following requirements:

a. The good or service shall decrease the need for other Medicaid services;

b. The good or service shall promote participant inclusion in the community; or

c. The good or service shall increase a participant's safety in the home environment; and

d. The participant does not have the funds to purchase the good or service;

5. If participant directed and purchased from a participant directed budget, shall be prior authorized;

6. Shall not include experimental or prohibited treatments;

7. Shall be clearly linked to a participant need that has been documented in the participant's POC.

8. Shall be coordinated and documented by a case manager by:

a. Description or itemized line item of purchase and cost;

b. Receipts for procurements which include the date of purchase;

c. The signature and title of the case manager; and

d. The date the entry was made in the record; and

9. Shall not exceed \$1,800 per one (1) year authorized POC period.

(b) A purchase of a good or service shall not circumvent other restrictions on SCL waiver services:

1. Established in this administrative regulation; and

2. Including the prohibition against claiming for the costs of room and board.

(c) An individual serving as the representative of a participant for whom the goods and services are being purchased shall not be eligible to be a provider of participant directed goods and services.

(d) A family member who resides in the same house as the participant shall not be a provider of participant directed goods and services to the participant.

(e) A case manager shall submit documentation to the financial management services agency to make a direct payments to the approved vendor of a good or service.

(f) Equipment purchased as a good shall become the property

of the participant.

(12)(a) Natural supports training:

1. Shall be provided by an SCL provider employee who meets the personnel and training requirements established in Section 3 of this administrative regulation.

2. Shall be participant directed;

3. Shall include:

a. Training and education to individuals who provide unpaid support, training, companionship, or supervision to participants;

b. Instruction about treatment regimens and other services specified in the participant's POC;

c. Instruction on current best practices;

d. The costs of registration and training fees associated with formal instruction in areas relevant to the participant's needs identified in the participant's POC; or

e. Training provided by a member of the participant's community regarding specific interests of the participant and how the natural support network shall support the participant's inclusion in activities and events surrounding the area of interest;

3. Shall be individualized, direct training of families and natural support networks for acquisition or enhancement of their ability to support the participant;

4. Shall relate to needs identified in a participant's person centered POC and be tied to a specific goal in the POC;

5. Shall not duplicate or occur simultaneously with any education or training provided through:

a. Physical therapy services;

b. Occupational therapy services;

c. Speech and language therapy services;

d. Consultative clinical and therapeutic services; or

e. Positive behavior support services;

6. Shall be provided by a vendor approved by DBHDID;

7. Shall be provided in:

a. A participant's own home or a participant's family's home; or

b. Community setting specific to community-based natural supports training goals specified in the participant's POC;

8. Shall not include:

a. Services reimbursable by any other support;

b. Training paid caregivers;

c. Costs of travel, meals, or overnight lodging to attend a training event or conference;

d. Services not related to the needs of the participant;

9. Shall be coordinated and documented by a case manager by:

a. The specific training provided;

b. The date and the beginning and ending time when the service was provided;

c. The service location;

d. The receipts or verification of service provision, including first and last name and title (if applicable) of the person providing the service and the signature of the person providing the service;

e. Verification of registration and certificate of attendance at any formal training; and

f. The progress made in moving the participant towards independence as reflected in goals and the participant's POC; and

10. Shall not exceed \$1,000 per one (1) year authorized POC period.

(b) A family member or designated representative of a participant shall not be eligible to be a participant directed provider of natural supports training services for the participant.

(c) An individual serving as a representative in participated directed services shall not be eligible to be a participant directed provider of natural supports training services.

(d) For purposes of natural supports training, an individual shall be defined as any person, family member, neighbor, friend, companion, or co-worker who provides uncompensated care, training, guidance, companionship, or support to the participant who utilizes natural supports training.

(e) A case manager shall submit documentation to the financial management services agency to make direct payments or reimbursement to the DBHDID-approved vendor or unpaid caregiver.

(13) Occupational therapy shall:

(a) Be provided by an:

1.a. Occupational therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

b. Occupational therapy assistant who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Order of a physician;

(b) Be evaluation and therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program:

(c) Include:

1. Evaluation of a participant and the participant's environment;

2. Therapeutic activities to improve functional performance;

3. Sensory integrative techniques to enhance sensory processing and promote adaptive responses to environmental demands; and

4. Participant and family education;

(d) Facilitate maximum independence by establishing life skills with an emphasis on safety and environmental adaptation to improve quality of life and increase meaning and purpose in daily living and community integration;

(e) Promote fine motor skills, coordination, sensory integration, and facilitate the use of adaptive equipment or other assistive technology;

(f) Include, as needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

(g) Include the development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

(h) Be delivered in a participant's home or in the community as described in the participant's POC;

(i) Include monitoring:

1. Of the fidelity of data reporting and participant's POC implementation;

2. Of the effectiveness of the participant's POC;

3. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

4. Which shall be conducted:

a. In the settings where the participant's POC is implemented; and

b. Through discussions and observations of people implementing the participant's POC; and

c. Through reporting data;

(j) Be documented by:

1. A note documenting each contact which shall include:

a. A full description of each service rendered;

b. Evidence of the training or service to support the outcomes designated in the POC;

c. The date of the service;

d. The location of the service;

e. The beginning and ending time of the service;

f. The signature and title of the person providing the service; and

g. The date the entry was made in the record; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. Evidence of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. The projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the person completing the note;

f. The date the note was written; and

g. The signature and title of the occupational therapist supervising the occupational therapy assistant and date of the documentation review as applicable;

(k) Not be available to a participant under the age of twenty-one (21);

(l) Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and

(m) Be limited to fifty-two (52) fifteen (15) minute units per

month.

(14)(a) Person centered coaching shall:

1. Be provided by a person centered coach who shall:

a. Operate independently of a residential or day training provider;

b. Be supervised by a positive behavior support specialist in the settings where the POC is implemented and through discussions with and observations of the person centered coach implementing the plan and reporting data; and

c. Meet the personnel and training requirements specified in Section 3 of this administrative regulation;

2. Be an individualized service to be utilized when a barrier challenges the success of a participant in achieving the participant's goals

3. Include:

a. The provision of training developed in conjunction with certified or licensed professionals from the participant's person centered team, to the participant, family, guardian, natural and paid supports on implementation of all or designated components of the participant's POC; and

b. Monitoring and assessing the effectiveness of person centered planning as demonstrated by the support system's implementation of the POC or designated components across the array of service settings and reporting of required and pertinent data; and

c. Data collection which shall be utilized by the participant's person centered team to modify the environment or POC as needed;

4. Not duplicate case management or any other service;

5. Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and

6. Be limited to 1,320 fifteen (15) minute units per year.

(b) An individualized service shall be outcome-based with a plan for the gradual withdrawal of the services.

(c) A person centered coach shall not be considered as part of a staffing ratio, plan, or pattern.

(d) Documentation of a person centered coaching service shall include:

a. A note documenting each contact which shall include:

(i) A full description of each service rendered;

(ii) The date of the service;

(iii) The location of the service;

(iv) The beginning and ending time of the service;

(v) The signature and title of the individual providing the service;

(vi) The date the entry was made in the record; and

b. A completed monthly summary note which shall include:

(i) The month and year for the time period the note covers;

(ii) An analysis of the efficacy of the service provided including recommendations and identification of additional support needs if any exist;

(iii) The signature and title of the individual completing the note;

(iv) The date the note was written; and

(v) The signature, title, and date of review of documentation by the positive behavior specialist supervising the person centered coach.

(15) Personal assistance services:

(a) Shall be provided by a direct support professional;

(b) Shall enable a participant to accomplish tasks that the participant normally would do for him or herself if the participant did not have a disability;

(c) Shall be available only to a participant who lives in the participant's own residence or in the participant's family residence;

(d) May be participant directed if the participant chooses this option;

(e) Shall include:

1. Hands-on assistance (performing a task for a participant);

2. Reminding, observing, guiding, or training a participant in activities of daily living;

3. Reminding, observing, guiding, or training a participant in independent activities of daily living;

4. Assisting a participant in managing the participant's medical

care including making medical appointments and accompanying the participant to medical appointments; or

5. Transportation, which is not otherwise available under the Medicaid Program, to access community services, activities, and appointments;

(f) Shall take place in a participant's home or in the community as appropriate to the participant's need;

(g) Shall not be available to a participant:

1. Receiving paid residential supports; or

2. Under the age of twenty-one (21) if medically necessary personal assistance is available as an Early and Periodic Screening, Diagnosis, and Treatment service;

(h) Shall not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); and

(i) Shall be documented by:

1. A note for each contact which shall include:

a. A full description of each service rendered;

b. Evidence of training or service to support outcomes designated in the participant's POC as appropriate;

c. The date of the service;

d. The location of the service;

e. The beginning and ending time of the service;

f. The signature and title of the direct support professional providing the service; and

g. The date the entry was made in the record; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. Evidence of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcome or outcomes;

d. Projected plan to achieve the next step in achievement of outcome or outcomes;

e. The signature and title of the direct support professional completing the note;

f. The date the note was written; and

g. The signature, title, and date documentation reviewed by the direct support professional supervisor supervising the direct support professional.

(16) Physical therapy shall:

(a) Include evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;

(b) Address physical therapy needs that result from a participant's developmental disability;

(c) Facilitate a participant's independent functioning or prevent progressive disabilities;

(d) Include:

1. Evaluation;

2. Therapeutic procedures;

3. Therapeutic exercises to increase range of motion and flexibility;

4. Participant or family education;

5. Assessment of a participant's environment;

6. If needed, development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

7. As needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the community;

8. Monitoring:

a. Of the fidelity of data reporting and participant's POC implementation;

b. Of the effectiveness of the participant's POC;

c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

d. Which shall be conducted:

(i) In the settings where the participant's POC is implemented; and

(ii) Through discussions and observations of people implementing the participant's POC; and

(iii) Through reporting data;

- (e) Be provided by:
 - 1.a. A physical therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation; or
 - b. A physical therapist assistant who meets the personnel and training requirements established in Section 3 of this administrative regulation; and
 - 2. An order of a physician;
- (f) Be delivered in a participant's home or in the participant's community as described in the participant's POC;
- (g) Not be available to a participant under the age of twenty-one (21) years;
- (h) Not supplant educational services available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.);
- (i) Be documented by:
 - 1. A note documenting each contact which shall include:
 - a. A full description of each service rendered;
 - b. Evidence of the training or service to support the outcomes designated in the POC;
 - c. The date of the service;
 - d. The location of the service;
 - e. The beginning and ending time of the service;
 - f. The signature and title of the person providing the service;
 - and
 - g. The date the entry was made in the record; and
 - 2. A detailed monthly summary note which shall include:
 - a. The month and year for the time period the note covers;
 - b. Evidence of progress toward the participant's outcome or outcomes;
 - c. Identification of barriers to achievement of outcomes;
 - d. The projected plan to achieve the next step in achievement of outcomes;
 - e. The signature and title of the person completing the note;
 - f. The date the note was written; and
 - g. The signature and title of the physical therapist supervising the physical therapist assistant and date of the documentation review as applicable; and
- (j) Be limited to fifty two (52) fifteen (15) minute units per month.
- (17)(a) Positive behavior supports shall include:
 - 1. The utilization of evidenced based and best practices in behavioral techniques, interventions, and methods to assist a participant with significant, intensive challenges which interfere with activities of daily living, social interaction, or work;
 - 2. Evidenced based or best practices regarding treatment of a behavioral health condition which shall be the primary support services when supplemental behavioral interventions are needed; and
 - 3. A positive behavior support plan which shall:
 - a. Be clearly based upon the information, data collected, and recommendations from the functional assessment;
 - b. Meet the primary purpose of having the participant acquire or maintain skills for community living while behavioral interventions are delivered for the reduction of significant challenges which interfere with activities of daily living, social interaction, or work;
 - c. Be developed with the participant and participant's person centered team;
 - d. Be related to goals of interventions, such as greater participation in activities, enhanced coping or social skills;
 - e. Include all the positive behavior support components specified in the Supports for Community Living Policy Manual;
 - f. Be revised whenever necessary; and
 - g. Be implemented across service settings by the various people, both paid and natural supports, assisting a participant to reach the participant's goals and dreams.
- (b) Positive behavior supports shall be provided by a positive behavior support specialist who meets the personnel and training requirements established in Section 3 of this administrative regulation.
- (c) Behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner.
- (d) One (1) unit of positive behavior supports shall equal one (1) plan.
- (e) Positive behavior supports shall be billed in accordance

with 907 KAR 12:020.

- (18) Residential support services shall:
 - (a) Be authorized for a participant based upon information from the participant's Supports Intensity Scale assessment, Health Risk Screening Tool assessment, and approved person centered POC;
 - (b) Include:
 - 1. Level I residential supports;
 - 2. Technology assisted level I residential supports; or
 - 3. Level II residential supports; and
 - (c) Be documented by a:
 - 1. Daily note which shall include:
 - a. Information about how a participant spent the day including any effort toward meeting any outcome identified in the participant's POC;
 - b. The date of the service;
 - c. The location of the service;
 - d. The signature and title of the individual providing the service;
 - and
 - e. The date the entry was made in the record;
 - 2. Detailed monthly summary note which shall include:
 - a. The month and year for the time period covered by the note;
 - b. An analysis of progress toward a participant's outcome or outcomes;
 - c. A projected plan to achieve the next step in achievement of an outcome or outcomes;
 - d. Information regarding events that occurred that had an impact on a participant's life;
 - e. The signature and title of the individual writing the note;
 - f. The date the note was written;
 - g. The signature, title, and date of documentation review by the direct support professional supervisor providing supervision to the direct support professional.
- (19)(a) Level I residential supports shall:
 - 1. Be furnished in a provider-owned or leased residence which complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence;
 - 2. Be for a participant who requires a twenty-four (24) hour a day, intense level of support; and
 - 3. Include no more than five (5) unsupervised hours per day per participant:
 - a. To promote increased independence;
 - b. Which shall be based on the:
 - (i) Needs of the participant as determined by the participant's person centered team; and
 - (ii) Participant's POC;
 - 4. Include:
 - (i) Adaptive skill development;
 - (ii) Assistance with activities of daily living including bathing, dressing, toileting, transferring, or maintaining continence;
 - (iii) Community inclusion;
 - (iv) Adult education supports;
 - (v) Social and leisure development;
 - (vi) Protective oversight or supervision;
 - (vii) Transportation;
 - (viii) Personal assistance; and
 - (ix) The provision of medical or health care services that are integral to meeting the participant's daily needs; and
 - 5. Be outlined in a participant's POC.
 - (b) Level I residential supports shall be provided by a:
 - 1. Staffed residence which:
 - a. Has been certified:
 - (i) By the department to be an SCL waiver provider; and
 - (ii) By DBHDID to provide level I residential supports; and
 - b. Shall have no more than three (3) participants receiving publicly-funded supports in a home leased or owned by the provider;
 - 2. Group home which:
 - a. Has been certified:
 - (i) By the department to be an SCL waiver provider; and
 - (ii) By DBHDID to provide level I residential supports; and
 - b. Shall have no more than eight (8) participants in the group home.
 - (c)1. For a participant approved for unsupervised time, a safety plan shall be included in the participant's POC based upon the

participant's assessed needs.

2. A participant's case manager and other person centered team members shall ensure that a participant is able to implement a safety plan.

3. A participant's case manager shall provide ongoing monitoring of the safety plan, procedures, or assistive devices required by a participant to ensure relevance, the participant's ability to implement the safety plan, and the functionality of the devices if required.

(d) If a participant experiences a change in support needs or status, the participant's person centered team shall meet to make the necessary adjustments in the:

1. Participant's POC; and
2. Residential services to meet the participant's needs.

(e) A level I residential support provider shall employ staff who shall be a:

1. Direct support professional; or
2. Direct support professional supervisor if providing supervision.

(20)(a) Technology assisted residential services shall:

1. Be furnished in a provider-owned or leased residence:

- a. Which complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence; and

b. To three (3) or fewer participants who previously resided in the residence with twenty-four (24) hour staff support;

2. Be for a participant who:

a. Requires up to twenty-four (24) hour a day of support; and

b. Is able to increase his or her level of independence with a reduced need for onsite staff;

3. Include, to the extent required for a participant:

a. Protective oversight or supervision;

b. Transportation;

c. Personal assistance; or

d. The provision of medical or health care services that are integral to meeting the participant's daily needs;

4. Increase a participant's independence without undue risk to the participant's health or safety;

5. Be a real-time monitoring system with a two (2) way method of communication linking a participant to a centralized monitoring station; and

6. Be allowed to include:

a. An electronic sensor;

b. A speakers or microphone;

c. A video camera which shall not be located in a bedroom or a bathroom;

d. A smoke detector; or

e. A personal emergency response system.

(b)1. A device listed in paragraph (a)6. of this subsection shall link a participant's residence to remote staff employed to provide electronic support.

2. A technology assisted residential service provider shall have a plan established to ensure that staff is available twenty-four (24) hours a day, seven (7) days a week for a participant or participants receiving services from the provider.

(c) Technology shall be used by the technology assisted residential service provider to assist a participant in residing in the most integrated setting appropriate to the participant's needs.

(d) The level and types of technology assisted residential services provided to a participant shall be:

1. Determined by a participant's person centered team; and
2. Outlined in a participant's POC.

(e) A participant's person centered team shall give careful consideration to the participant's medical, behavioral, and psychiatric condition in determining the level and types of technology assisted residential services needed for a participant.

(f) The use of technology to reduce a participant's need for residential staff support in a residence may be utilized if there is an individualized person centered POC which has been developed to promote a participant's increased independence:

1. Based on the participant's needs as indicated in the scores and results of the Supports Intensity Scale assessment and Health Risk Screening Tool assessment; and
2. As recommended by the participant's person centered team.

(g)1. If a participant experiences a change in support need or status, the technology assisted residential service provider shall:

a. Immediately adjust the participant's supervision to meet any acute need of the participant; and

b. Reassess the appropriateness of technology assisted residential services and make any adjustment, if needed, to meet any chronic support need of the participant.

2. Any adjustment shall be made in collaboration with the participant's case manager and person centered team if the adjustment is to be implemented for a period longer than what was determined by the participant's person centered team when developing the participant's POC.

(h) A technology assisted residential service provider shall:

1. Be responsible for arranging or providing a participant's transportation between the participant's residence and any other service site or community location;

2. Employ staff who:

a. Shall be a:

(i) Direct support professional; or

(ii) Direct support professional supervisor if providing supervision; and

b. Demonstrate:

(i) Proficiency in the individual's ability to operate all monitoring devices utilized in technology assisted residential services; and

(ii) The ability to respond appropriately to the needs of participants in a timely manner; and

3. Have daily contact with a participant.

(21)(a) Level II residential supports shall:

1. Be for a participant who requires up to a twenty-four (24)-hour level of support;

2. Be a support tailored to a participant to assist the participant with acquiring, retaining, or improving skills related to living in a community;

3. Be designed and implemented to assist a participant to reside in the most integrated setting appropriate to the participant's needs;

4. Provide support for a participant up to twenty-four (24) hours a day; and

5. Be furnished in:

- a. An adult foster care home;
- b. A family home provider; or
- c. A participant's own home;

(b) Level II residential supports shall be provided by:

1. An adult foster care provider which:

a. Has been certified:

- (i) By the department to be an SCL waiver provider; and
- (ii) By DBHDID to provide level II residential supports; and

b. Shall have no more than three (3) participants who are:

- (i) Aged eighteen (18) years or older; and
- (ii) Receiving publicly-funded supports and living in the home;

or

2. A family home provider which:

a. Has been certified:

- (i) By the department to be an SCL waiver provider; and
- (ii) By DBHDID to provide level II residential supports; and

b. Shall have no more than three (3) participants receiving publicly-funded supports living in the home.

(c) A level II residential support provider shall employ staff who shall be a:

1. Direct support professional; or
2. Direct support professional supervisor if providing supervision.

(d) If a participant experiences a change in support need or status, the level II residential services provider shall adjust services provided to the participant to meet the participant's altered need or status.

(22) Respite:

(a) Shall:

1. Be provided to a participant who:

- a. Does not receive residential services;
- b. Resides in the participant's own home or family's home; and
- c. Is unable to independently administer self-care;

2. Be provided:

- a. In a variety of settings;

b. By a direct support professional who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

c. On a short-term basis due to the absence or need for relief of an individual providing care to a participant;

3. Documented by a contact note which shall include:

a. The date of the service;

b. The beginning and ending time of the service;

c. A full description of each service rendered;

d. The signature and title of the individual providing the service; and

e. The date the entry was made in the record; and

4. Not exceed 830 hours per calendar year; and

(b) May be participant directed.

(23)(a) Shared living shall be a participant directed service designed to:

1. Be an alternative to residential support services;

2. Allow a participant to live in the participant's own home with an unrelated caregiver who:

a. Resides in the participant's home with the participant; and

b. Provides some of the participant's supports in exchange for the caregiver's share of room and board expenses.

(b) A payment for the portion of the costs of rent or food attributable to an unrelated personal caregiver shall be routed through the financial management agency specifically for reimbursing the participant.

(c) If two (2) participants choose to live together in a home, the two (2) may share a caregiver.

(d) Depending upon the need of a participant, a caregiver may provide:

1. Assistance with the acquisition, retention, or improvement in skills related to activities of daily living; or

b. Supervision required for safety or the social and adaptive skills necessary to enable the participant to reside safely and comfortably in the participant's own home.

(e) Shared living services shall:

1. Address a participant's needs identified in the participant's person centered planning process;

2. Be outlined in the participant's POC;

3. Be specified in a contractual agreement between the participant and the caregiver; and

4. Complement other services the participant receives and enhance increased independence for the participant.

(f) A participant's person centered team shall decide and ensure that the individual who will serve as the participant's caregiver has the experience, skills, training, and knowledge appropriate to the participant and the type of support needed.

(g) A participant's caregiver shall meet direct support professional qualifications in accordance with Section 1(26) of this administrative regulation.

(h) Room and board expenses for an unrelated caregiver living with a participant shall be:

1. Reflected in the participant's person centered POC; and

2. Specified in the contractual agreement between the participant and the caregiver.

(i) A payment shall not be made if a participant lives in the caregiver's home or in a residence that is owned or leased by an SCL provider.

(j) Documentation shall:

1. Be maintained by a participant's case manager; and

2. Include:

a. A dated monthly summary note that is written by the case manager and details how services were provided according to the contractual agreement and the participant's person centered POC;

b. A monthly receipt for the caregiver's room and board expenses that were reimbursed to the participant;

c. The signature and title of the case manager writing the note;

d. The date the note was written;

e. A signed and dated statement from the participant or the participant's designated representative indicating that the participant is satisfied with the services provided by the caregiver; and

h. The signature, title and date of documentation review by the case manager supervisor who is supervising the case manager.

(k) Shared living shall not exceed \$600 per month.

(24)(a) Specialized medical equipment and supplies shall:

1. Include a device, control, or appliance specified in a participant's POC which shall:

a. Be necessary to ensure the health, welfare, and safety of the participant; or

b. Enable the participant to function with greater independence in the home;

2. Include assessment or training needed to assist a participant with mobility, seating, bathing, transferring, security, or other skills including operating a wheelchair, a lock, a door opener, or a side lyre;

3. Include a computer necessary for operating communication devices, a scanning communicator, a speech amplifier, a control switch, an electronic control unit, a wheelchair, a lock, a door opener, or a side lyre;

4. Include customizing a device to meet a participant's needs;

5. Include partial nutrition supplements, special clothing, an enuresis protective chuck; or another authorized supply that is specified in the participant's POC;

6. Include an ancillary supply necessary for the proper functioning of an approved device;

7. Be identified in a participant's POC;

8. Be recommended by one of the following personnel whose signature shall verify the type of specialized equipment or supply that is necessary to meet the participant's need:

a. An occupational therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

b. A physical therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

c. A speech therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

d. A certified or licensed practitioner whose scope of practice includes the evaluation and recommendation of specialized equipment or supplies;

9. Not include equipment, a supply, an orthotic, prosthetic, service, or item covered under the department's:

a. Durable medical equipment program pursuant to 907 KAR 1:479;

b. Hearing services program pursuant to 907 KAR 1:038 or 907 KAR 1:039; or

c. EPSDT program pursuant to 907 KAR 11:034 or 907 KAR 11:035;

10. Be coordinated and documented by a case manager by:

a. A description or itemized line item of purchase and cost;

b. Receipts for procurements which include the date of purchase;

c. The signature and title of the case manager;

d. The date the entry was made in the record; and

e. The signature, title, and date of the documentation review by the case manager supervisor providing supervision to the case manager.

(b) Equipment purchased pursuant to this subsection for a participant shall become the property of the participant.

(25) Speech therapy which shall:

(a) Be provided by:

1. A speech language pathologist who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. An order of a physician;

(b) Include:

1. Include evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;

2. Speech and language therapy evaluation;

3. Individual treatment of voice;

4. Communication;

5. Auditory processing;

6. Therapeutic services for the use of speech-device including:

a. Programming and modification; or

b. Participant and family education;

7. Development of a home treatment or support plan with train-

ing and technical assistance provided on site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

8. As needed, coordination of program-wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

9. Monitoring:

a. Of the fidelity of data reporting and participant's POC implementation;

b. Of the effectiveness of the participant's POC;

c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

d. Which shall be conducted:

(i) In the settings where the participant's POC is implemented; and

(ii) Through discussions and observations of people implementing the participant's POC; and

(iii) Through reporting data;

(c) Preserve abilities for independent function in communication, motor and swallowing functions, facilitate use of assistive technology, and prevent regression;

(d) Be delivered in a participant's home or in the participant's community as described in the participant's POC;

(e) Not be available to a participant under the age of twenty-one (21) years;

(f) Not supplant educational services available under the IDEA U.S.C. 1401 et seq.; and

(g) Be documented by:

1. A note documenting each contact which shall include:

a. A full description of each service rendered;

b. Evidence of training or service to support an outcome or outcomes designated in the participant's POC;

c. The date of the service;

d. The location of the service;

e. The beginning and ending time of the service;

f. The signature and title of the speech language pathologist providing the service; and

g. The date the entry was made in the record; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. Evidence of progress toward the participant's outcome or outcomes;

c. Identification of any barrier to achievement of an outcome or outcomes;

d. The projected plan to achieve the next step in an achievement of an outcome or outcomes;

e. The signature and title of the speech language pathologist completing the note; and

f. The date the note was written; and

(h) Be limited to fifty-two (52) fifteen (15) minute units per month.

(26)(a) Supported employment shall be funded by the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401 et seq.) for a participant if funding is available under either act for the participant.

(b) If the funding referenced in paragraph (a) of this paragraph is not available for a participant, SCL waiver funding may be accessed for the participant for all defined supported employment services when there has been no change in the impact of the participant's disability on the participant's employment.

(c) Supported employment shall:

1. Be covered for a participant if no change in the impact of a participant's disability on the participant's employment has occurred; and

a. A Long-Term Employment Support Plan has been completed and incorporated into the participant's person centered POC; or

b. There is documentation of the payment of the supported employment individual outcome placement fee indicating closure of the case by the Office of Vocational Rehabilitation;

2. Be participant directed, if a participant chooses this option;

3. Be provided:

a. In a variety of settings;

b. By a supported employment specialist who:

(i) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

(ii) Works for an SCL certified provider that is a vendor of supported employment services for the Office of Vocational Rehabilitation;

c. In accordance with the supported employment policies stated in the current Supports for Community Living Policy Manual and using the documentation forms specified in the Supports for Community Living Policy Manual

4. Be delivered on a one (1) to one (1) basis with a participant or indirectly on behalf of a participant;

5. Exclude work performed directly for the supported employment provider or other service provider;

6. Be coordinated with other applicable 1915(c) home and community based waiver services, if applicable, in support of the participant's employment outcome; and

7. Be documented as required in the Supports for Community Living Policy Manual.

(d) Supported employment services delivered on a one-to-one basis and the hours spent by a participant performing paid employment and adult day training shall not exceed:

1. Forty (40) hours; or

2. 160 units per week.

(e) A supported employment service shall be documented in accordance with the Supports for Community Living Policy Manual and as follows:

1. A Person Centered Employment Plan shall be completed by a participant's supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual;

2. A Supported Employment Long-Term Support Plan shall be completed by a participant's supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual;

3. A Person Centered Employment Plan Activity Note, notes regarding a participant's job development activity, notes regarding a participant's job acquisition or stabilization activity, and notes regarding a participant's long-term employment support activity shall:

a. Be completed by a participant's supported employment specialist to document each contact with the participant or action provided on behalf of the participant; and

b. Contain:

(i) The date of the service;

(ii) The beginning time of the service;

(iii) The ending time of the service;

(iv) A description of the activity that was conducted;

(v) The justification of the activity;

(vi) The results of the activity;

(vii) The anticipated content of the next activity;

(viii) The signature of the supported employment specialist who provided the service.

(27)(a) A transportation service shall:

1. Enable a participant who chooses to participant direct services to gain access to integrated waiver and other community services, activities, resources, and organizations typically utilized by the general population; and

2. Only be provided when transportation is not:

a. Otherwise and customarily available through natural supports including family, friends, neighbors, or community agencies; or

b. Included as an element of another SCL waiver service;

3. Include non-emergency travel;

4. Be clearly described in a participant's POC which shall include information regarding the unavailability of other transportation services or resources;

5. Be reimbursable based upon the assessed needs of a participant as specified in the participant's POC;

6. Be provided by a driver who:

a. Is at least eighteen (18) years of age and legally licensed by the Commonwealth of Kentucky to operate the transporting vehicle to which the individual is assigned or owns;

b. Has a proof of current liability insurance for the vehicle in which the participant will be transported; and

c. Is a neighbor, friend, or other public transit resource including a local cab or bus service; and

7. Not:

a. Include transporting a participant to school [through the twelfth grade];

b. Be available to a participant who:

(i) Receives transportation as an element of another covered service;

(ii) Is receiving a residential service via the SCL waiver program;

(iii) Has access to transportation under the Individuals with Disabilities Education Act; or

(iv) Customarily receives transportation from a relative.

b. The date that the following documentation is completed and submitted to the financial management services agency for direct payment to the approved vendor:

(c) A case manager shall:

1. Coordinate transportation services; and

2. Ensure that the following documentation is completed and submitted to the financial management services agency for direct payment to the approved vendor:

a. The specific type and purpose of transportation provided;

b. The date and the beginning and ending time when the service was provided;

c. The location of origin of the transportation service, destination of the transportation service, and the mileage incurred from point to point;

d. Verification of service delivery, including the first and last name and title (if applicable) of the individual providing the service; and

e. A receipt from the driver if a bus, taxicab, or similar type of transportation service in which the participant directly purchases the service is utilized.

(28)(a) A vehicle adaptation shall:

1. Be a device, control, or service that enables a participant to:

a. Increase the participant's independence and physical safety; and

b. Interact more independently with the participant's environment and reduce the participant's dependence on physical support from others;

2. Be made to a participant's or a participant's family's privately owned vehicle;

3. Include

a. A hydraulic lift;

b. A ramps

c. A special seat; or

d. An interior modification to allow for access into and out of the vehicle as well as safety while the vehicle is moving;

4. Be limited to \$6,000 per five (5) years per participant;

5. Be prior authorized by the department in order to be reimbursable by the department; and

6. Be coordinated and documented by a case manager by:

a. Documenting an estimate from a vendor determined to be qualified to complete vehicle modifications by the Office of Vocational Rehabilitation;

b. Documentation from the Office of Vocational Rehabilitation that the participant is not qualified to receive a vehicle modification from the Office of Vocational Rehabilitation;

c. A description or itemized line item of purchase and cost;

d. A receipt for procurements which shall include the date of purchase;

e. Verification by the case manager that the work is complete, adequate, and satisfactory within ten (10) business days of completion before payment is requested and issued;

f. The signature and title of the case manager; and

g. The date the entry was made in the record.

(b) The department's SCL program shall be the payer of last resort for a vehicle adaptation.

(c) The need for a vehicle adaptation shall:

1. Be documented in a participant's person centered POC;

2. Include an assessment from an occupational therapist or physical therapist specializing in vehicle modifications that result in specific recommendations for the type of modification to meet the needs of the participant.

(d) The department shall not reimburse for the repair or replacement costs of a vehicle adaptation of a vehicle owned by an SCL provider.

(e) A vehicle adaptation vendor shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020.

(f) A family member living in the home of a participant shall not be reimbursed by the department for a vehicle adaptation provided to the participant.

(g) A vehicle adaptation

(h) A case manager shall submit documentation to the financial management services agency to make a direct payment to the approved vendor for a participant who has chosen to participant direct a vehicle adaptation.

Section 5. Participant Directed Services (PDS). (1)(a) The services listed in paragraph (c) of this subsection may be participant directed and shall be provided in accordance with the specifications and requirements established in Section 4 of this administrative regulation and the Supports for Community Living Policy Manual.

(b) An individual who provides a service listed in paragraph (c) of this subsection shall meet the provider qualification requirements for the respective service in accordance with Section 4 of this administrative regulation.

(c)1. Community access services.

2. Community guide services.

3. Day training.

4. Personal assistance services.

5. Respite.

6. Shared living.

7. Supported employment.

(2) The following services may be participant directed and shall be provided in accordance with the specifications and requirements stated in Section 4 of this administrative regulation:

(a) Environmental accessibility adaptation services;

(b) Goods and services;

(c) Natural supports training;

(d) Transportation services; or

(e) Vehicle adaptation services.

(3) A family member or guardian of a participant may provide a support to a participant directed service if:

(a) Allowed to do so pursuant to Section 4 of this administrative regulation;

(b) The family member or guardian has the unique abilities necessary to meet the needs of the participant;

(c) The service is not something normally provided by the family member or guardian to the participant;

(d) The family member or guardian meets the training requirements established in Section 3 of this administrative regulation for the service;

(e) Delivery of the service by the family member or guardian is cost effective;

(f) The use of the family member or guardian is age and developmentally appropriate;

(g) The use of the family member or guardian enables the participant to:

1. Learn and adapt to different people; and

2. Form new relationships;

(h) The participant learns skills to increase independence;

(i) Having the family member or guardian provide the service:

1. Truly reflects the participant's wishes and desires;

2. Increases the participant's quality of life in measurable ways;

3. Increases the participant's level of independence;

4. Increases the participant's choices; and

5. Increases the participant's access to the amount of service hours for needed support; and

(j)1. There is no qualified provider within thirty (30) minutes from the participant's residence; or

2. There is no qualified provider who can furnish the service at the necessary times and places.

(4) A legally responsible individual may provide a service to a participant if:

(a) Allowed to do so pursuant to Section 4 of this administrative

regulation;

(b) The legally responsible individual meets the requirements established for a family member or guardian in subsection (3) of this section;

(c) The service exceeds the range of activities that a legally responsible individual would ordinarily provide in a household on behalf of a person:

1. Without a disability; and
2. Of the same age; and
- (d) The service is necessary to:

1. Assure the health and welfare of the participant; and
2. Avoid institutionalization.

(5)(a) An individual who provides a participant directed service shall complete the following training requirements within six (6) months of the date of hire or of the date the individual began providing the service:

1. First aid and cardiopulmonary resuscitation certification by the American Red Cross or the American Heart Association;
2. If administering or monitoring the administration of a medication, an approved DBHDID medication administration curriculum;
3. Individualized instruction regarding the participant receiving a support;
4. The following areas of the Kentucky College of Direct Support modules:

- a. Maltreatment of vulnerable adults and children;
- b. Individual rights and choice;
- c. Safety at home and in the community;
- d. Supporting healthy lives;
- e. Person centered planning; and
5. Other training if required by the participant.

(b) The Kentucky College of Direct Support modules training listed in subparagraph 4. of paragraph (a) shall be paid for and facilitated by DBHDID.

(6) A contracted employee or an individual employed by an agency providing a participant-directed support to more than three (3) participants in the same household or different households, shall complete all provider training requirements as specified in Section 3 of this administrative regulation.

(7) A participant directed reimbursement service shall be provided by a financial management agency with whom the department contracts that shall:

(a) Only pay for service identified and prior authorized in a participant's POC;

(b) Ensure compliance with all Internal Revenue Service regulations, United States Department of Labor regulations, and Kentucky Department of Workers' Claims regulations regarding workers' compensation;

(c) Process employer-related payroll and deposit and withhold necessary mandatory employer withholdings;

(d) Receive, disburse, and track public funds based on a participant's approved POC;

(e) Provide:

1. A participant and the participant's case manager with payroll reports semi-monthly;
2. Additional payroll information to a participant's case manager on a per request basis; and
3. Reports to DBHDID.

(8)(a) A participant may voluntarily dis-enroll from a participant directed service at any time.

(b) If a participant elects to dis-enroll from a participant directed service, the participant's case manager shall assist the participant and the participant's designated representative to locate a traditional waiver service provider of the participant's choice to provide the service.

(c) A participant directed service shall not be terminated until a traditional service provider is ready to provide the service.

(9)(a) If case management monitoring reveals that a participant's health, safety, or welfare is being jeopardized, the participant's case manager shall:

1. Develop a corrective action plan in conjunction with the participant, the participant's guardian, and any other person centered team member if any other individual is on the team; and
2. Monitor the progress of the corrective action plan and resulting outcomes to resolve the health, safety, or welfare issue.

(b) If the health, safety, or welfare issue referenced in paragraph (a) of this subsection is not resolved, the participant's case manager, in conjunction with the participant and the participant's person centered team members, shall assist the participant to locate a traditional waiver service provider of the participant's choice to provide the service.

(c) A participant directed service shall not be terminated until a traditional service provider is ready to provide the service.

(10) Documentation of a participant directed service shall include:

(a) A timesheet; and

(b) A note documenting each contact which shall include:

1. A full description of each service provided to support an outcome or outcomes in the participant's POC;
2. The date of the service;
3. The location of the service;
4. The beginning and ending time of the service;
5. The signature and title of the person providing the service; and
6. The date the entry was made in the record; and

(c) Any applicable form for each service in accordance with Section 4 of this administrative regulation.

Section 6. Incident Reporting Process. (1) The following shall be the two (2) classes of incidents:

- (a) An incident; or
- (b) A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

- (a) A minor injury;
- (b) A medication error without a serious outcome;
- (c) A behavior or situation which is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;
2. A serious medication error;
3. Death;
4. A homicidal or suicidal ideation;
5. A missing person; or
6. Other action or event.

(4)(a) An incident shall:

1. Be documented on an Incident Report; and
2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates the potential for abuse, neglect, or exploitation exists:

1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;

2. The incident shall immediately be considered a critical incident;

3. The critical incident procedures established in subsection (5) of this section shall be followed;

4. The SCL provider shall report the incident to the participant's case manager and participant's designated representative within twenty-four (24) hours of discovery of the incident;

5. The witness of the incident or discovery agency employee or volunteer shall record details of the incident on an Incident Report Form;

6. A completed Incident Report Form shall be retained on file by the SCL provider; and

7. A copy of the completed Incident Report Form shall be provided to the case management agency providing case management to the participant.

(5) If a critical incident occurs:

(a) The individual who witnessed the critical incident or discovered the critical incident shall:

1. Immediately act to ensure the health, safety, and welfare of the at-risk participant;

2. Immediately report the critical incident to:

- a. The Department for Community Based Services, Adult Pro-

protective Services Branch or Child Protective Services Branch, as applicable:

- b. The participant's case manager;
- c. The participant's designated representative; and
- d. DBHDID, via fax, if abuse, neglect, or exploitation is suspected; and'

3. Document the incident on a Critical Incident Report;

(b) If the critical incident is not one which requires reporting of abuse, neglect, or exploitation, the critical incident shall be reported within eight (8) hours of discovery to:

- 1. The participant's case manager;
- 2. The participant's designated representative; and

3. To BHDID by fax, unless it occurs after 4:30 p.m. Eastern Standard Time or on a weekend, in which case notification shall be sent to DBHDID on the following business day;

(c) The witness of the critical incident or discovery agency employee or volunteer shall record details of the critical incident on an Incident Report Form;

(d)1. The SCL provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation;

2. Prepare a report of the investigation which shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

2. Details of the critical incident; and

3. Relevant participant information including:

a. Axis I diagnosis or diagnoses;

b. Axis II diagnosis or diagnoses;

c. Axis III diagnosis or diagnoses;

d. A listing of recent medical concerns;

e. An analysis of causal factors; and

f. Recommendations for preventing future occurrences; and

(e) The SCL provider shall:

1. Maintain the documentation of the critical incident required in this subsection at the SCL provider's site; and

2. Provide a copy of the documentation to the case management agency of the participant's case manager.

(6) An SCL provider shall submit, by fax, mortality data documentation following a death of a participant receiving services from the SCL provider to DBHDID within fourteen (14) days and include:

(a) The participant's current plan of care;

(b) Any current assessment forms regarding the participant;

(c) The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

(d) Progress notes regarding the participant from all service elements for the past thirty (30) days;

(e) The results of the participant's most recent physical exam;

(f) All incident reports, if any exists, regarding the participant for the past six (6) months;

(g) Any medication error report, if any exists, related to the participant for the past six (6) months;

(h) A current psychological evaluation of the participant;

(i) A full life history of the participating including any update from the last version of the life history;

(j) Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;

(k) Emergency medical services notes regarding the participant if available;

(l) The police report if available;

(m) A copy of:

1. The participant's advance directive, living will, or health care directive if applicable;

2. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and

3. The cardiopulmonary resuscitation and first aid card for any SCL provider's staff member who was present at the time of the incident which resulted in the participant's death;

(n) A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

(o) A record of any crisis training for any staff member present at the time of the incident which resulted in the participant's death.

(7)(a) An SCL provider shall report a medication error to DBHDID by the fifteenth of the month following the error by completing the Medication Error Report Form.

(b) An SCL provider shall document all medication error details on a medication error log retained on file at the SCL provider site.

Section 7. SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by DBHDID.

(2) An individual shall be placed on the SCL waiting list based upon the individual's region of origin in accordance with KRS 205.6317(3) and (4).

(3)(a) In order to be placed on the SCL waiting list, an individual shall submit to DBHDID a completed MAP-620, Application for I/DD Services, which shall include:

1. A signature from a physician or an SCL developmental disability professional indicating medical necessity;

2. A current and valid intellectual or development disability diagnosis, including supporting documentation to validate the diagnosis and age of onset; and

3. Completion of the Axis I, II, and III diagnoses list.

(b) Supporting documentation to validate a diagnosis and age of onset shall include:

1. A psychological or psycho-educational report of the assessment results of at least an individual test of intelligence resulting in an intelligence quotient (IQ) score; and

2. The results of an assessment of adaptive behavior abilities which has been signed by the licensed psychologist, licensed psychological associate, certified psychologist with autonomous functioning, or certified school psychologist who prepared the report.

(c) The IQ test referenced in paragraph (a)2. of this subsection shall:

1. Have been conducted before the age of eighteen (18) years for a diagnosis of intellectual disability or before the eight of twenty-two (22) years for a diagnosis of a developmental disability; or

2. If a record of an IQ score prior to the age of eighteen (18) years for an applicant with an intellectual disability or prior to the age of twenty-two (22) years for an applicant with a developmental disability cannot be obtained, the following shall qualify as supporting documentation to validate a diagnosis and age of onset:

a. Individual education program documentation which contains an IQ score and a report or description of adaptive behavior skills;

b. The results of a psychological assessment submitted during the course of guardianship proceedings; or

c. The results of a current psychological assessment shall:

(i) Include evidence of onset prior to the age of eighteen (18) years for an intellectual disability or the age of twenty-two (22) years for a developmental disability obtained through a comprehensive developmental history; and

(ii) Provide documentation ruling out factors or conditions which may contribute to diminished cognitive and adaptive functioning, including severe mental illness, chronic substance abuse, or medical conditions.

(4) DBHDID shall validate a MAP-620 application information.

(5) An individual's order of placement on the SCL waiting list shall be determined by the chronological date of receipt of a completed MAP-620 and by category of need of the individual as established in paragraphs (a) through (c) of this subsection.

(a) An individual's category of need shall be the emergency category if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect, or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing; or

b. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; or

5. Imminent or current institutionalization.

(b) An individual's category of need shall be the urgent category if an SCL service is needed within one (1) year; and

1. There is a threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;

2. The individual is residing in a temporary or inappropriate placement but the individual's health and safety is assured;

3. The individual's primary caregiver has a diminished capacity due to physical or mental status and no alternative primary caregiver exists; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention.

(c) An individual's category of need shall be classified as future planning if an SCL service is needed in more than one (1) year; and

1. The individual is currently receiving a service through another funding source that meets the individual's needs;

2. The individual is not currently receiving a service and does not currently need the service; or

3. The individual is in the custody of DCBS.

(6) A written notification of original placement on the SCL waiting list and any change due to a reconsideration shall be mailed to an individual or the individual's designated representative and case management provider if identified.

(7) In determining chronological status, the original date of receipt of a MAP- 620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) Maintenance of the SCL waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual.

(b) The individual or individual's designated representative and case management provider, if identified, shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and the individual's or individual's designated representative's continued desire to pursue placement in the SCL program.

(c) If a discrepancy in diagnostic information is noted at the time of the annual update, the department may request a current diagnosis of intellectual or developmental disability signed by a physician or SCL DDP, including documentation supporting the diagnosis.

(d) The information referenced in paragraph (c) of this subsection shall be received by the department within thirty (30) days from the date of the written request in order to be considered timely.

(10) A reassignment of an individual's category of need shall be completed based on updated information and the validation process.

(11) An individual or individual's designated representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(12)(a) The criteria for removal from the SCL waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or the individual's designated representative;

2. The individual is deceased;

3. A review of documentation reveals that the individual does not have an intellectual or a developmental disability diagnosis;

4. A notification of potential SCL funding is made and the individual or the individual's designated representative declines the potential funding and does not request to be maintained on the SCL waiting list; or

5. Notification of potential SCL funding is made and the individual or the individual's designated representative does not complete the enrollment process with DBHDID nor notify DBHDID of the need for an extension within sixty (60) days of the potential funding notice date.

(b)1. A notification of need for an extension for good cause shall consist of a statement signed by the individual or the individual's designated representative explaining the reason for the delay in accessing services, steps being taken to access services, and expected date to begin utilizing services.

2. Upon receipt of documentation, the department shall grant,

in writing, one (1) sixty (60) day extension.

(13) If a notification of potential SCL funding is made and an individual or the individual's designated representative declines the potential funding but requests to be maintained on the SCL waiting list:

(a) The individual shall be placed in the appropriate category on the SCL waiting list; and

(b) The chronological date shall remain the same.

(14) If an individual is removed from the SCL waiting list, DBHDID shall mail written notification to the:

(a) Individual or the individual's representative; and

(b) Individual's case management provider.

(15) The removal of an individual from the SCL waiting list shall not prevent the submission of a new application at a later date.

(16) An individual shall be allocated potential funding based upon:

(a) Category of need;

(b) Chronological date of placement on the SCL waiting list; and

(c) Region of origin in accordance with KRS 205.6318(3) and (4).

(17) To be allocated potential funding, an individual residing in an institution shall meet the following criteria in addition to the criteria established in this section.

(a) The individual's treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or the individual's designated representative.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with:

(a) The requirements established in KRS 369.101 to 369.120; and

(b) All applicable state and federal statutes and regulations.

(2) An SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, or contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

(3) A participant or participant's designated representative may choose to use an electronic signature and, if choosing to use an electronic signature, shall execute a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature.

Section 9. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be

in accordance with 907 KAR 1:671.

(4) The department shall not grant an appeal regarding a category of need determination made pursuant to Section 7 of this administrative regulation.

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

(a) The "Supports for Community Living Policy Manual", July 2012 edition;

(b) The "Person Centered Plan of Care", July 2012 edition;

(c) The "Supported Employment Long-Term Support Plan", December 2011 edition;

(d) The "Critical Incident Report", August 13, 2012 edition;

(e) The "Incident Report", August 13, 2012 edition;

(f) The "Person Centered Employment Plan", March 2012 edition;

(g) The "Person Centered Employment Plan Activity Note", July 2012 edition; and

(h) The "Medication Error Report Form", August 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or obtained online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012 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 September 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 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: Karen Martin (502) 564-7540, Claudia Johnson (502) 564-7702, Sheila Davis (502) 564-5560 or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service and coverage policies for the Medicaid Supports for Community Living (SCL) waiver program. The SCL program enables individuals with an intellectual or developmental disability to live, and receive services, in a community rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the Medicaid SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program

reimbursement policies.

(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; however, it's implementing a new version of an existing program - the Medicaid SCL waiver program.

Current SCL waiver participants will transition from the current SCL waiver to the new version during their annual person centered planning meeting which occurs during the month of the participant's next birthday. No participant will lose services due to this transition.

All services provided under the current SCL waiver program regulation (907 KAR 1:145) will be available in some form in this new administrative regulation except that fiscal management will be an administrative function rather than a service provided by an SCL waiver provider. Several of the current services have been renamed.

907 KAR 1:145 offers three similar services called adult day training on site, adult day training off site, and children's day habilitation. These services will be deleted and replaced, under this administrative regulation, with day training which encompasses all three previous services.

907 KAR 1:145 offers a service called community living supports which includes training or assistance to an individual who does not receive residential supports and can include a variety of activities designed to increase independence both in the home and in the community. This administrative regulation replaces this one service with two services - personal assistance and community access. Personal assistance is designed to enable SCL waiver program participants to accomplish tasks that they normally would do for themselves if they did not have a disability. Community access is designed to support the participant in meaningful routines, events, and organizations in the community. These services are designed to result in increased ability to access community resources by natural or unpaid supports.

907 KAR 1:145 includes residential supports which take place in four settings, staffed residence, group home, family home provider, and adult foster care. This administrative regulation replaces this service with two residential supports - level I and II and each has two levels of supervision. Level I residential supports will be in a provider owned residence and level II will be in a non-provider owned residence. Level II supports will also give the option of residential supports in the recipient's own home. A third residential support, technology assisted residential supports will also be offered to anyone currently in a staffed residence as a less restrictive alternative.

This administrative regulation introduces a new service for participants living in their own home called shared living which will also be offered as another option to increase independence and choice.

The support broker service in the current regulation will be replaced with a community guide service which will be optional for anyone choosing to self direct any or all of their services. Fiscal management will no longer be a covered service, but will be provided through a contract with a single entity that will provide it for all participants who choose to direct any of their services.

907 KAR 1:145 includes behavior supports which is being replaced with three (3) distinct services - positive behavior supports, consultative clinical and therapeutic services, and person centered coaching. Positive behavior supports is designed to assist the individual with significant, intensive challenges that interfere with activities of daily living, social interaction, work or volunteer situations. These services provide for the analysis of data collected during the functional assessment of behavior which is the basis for development of a positive behavior support plan for the acquisition or maintenance of skills for community living and behavioral intervention for the reduction of maladaptive behaviors. Consultative clinical and therapeutic service provides expertise, training and technical assistance to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions. Through this service, a professional may complete an assessment of the individual, their environment and system of supports; provide recommendations; and participate in development/revision of components of a partici-

person's person-centered plan. Individuals may need this service to coordinate program wide support addressing assessed needs, conditions or symptoms affecting their ability to fully participate in their community. Person centered coaching is an individualized service of monitoring, training, and assessing effectiveness of person centered planning. These services provide for modeling, monitoring, assessing and implementing the person centered plan. The person centered coach is responsible for training the individual, family, guardian, natural and paid supports as well as other team members who are recognized as an integral part of person centered planning when barriers challenge the success of the individual in achieving their goals.

The remaining services - respite, supported employment, occupational therapy, speech therapy, physical therapy, specialized medical equipment, goods and services - remain in the new regulation with some revision.

New services established in this administrative regulation include community transition, transportation, environmental accessibility, vehicle adaptation, and natural support training.

The term "consumer direction" is being replaced with "participant direction" with no change in function. Participant direction is the term utilized by the Centers for Medicare and Medicaid Services (CMS) who approved the 1915(c) home and community based waiver which federally authorizes this program.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation which amends an existing SCL waiver program. The SCL waiver program amendments result from recommendations from a coalition including advocates, various other stakeholders, the Department for Behavioral Health and Intellectual Disabilities (DBHDID) and the Department for Medicaid Services (DMS). The intent of the new SCL waiver program is to offer a greater opportunity for program participants to realize individual goals; to ensure that participants in the program are healthy, safe and respectful in their community; that participants are able to live in their respective communities with effective and individualized assistance; and that participants enjoy living and working in their respective communities. The coalition identified new services or service modifications, program changes and system changes that will lead to better identification of individual's needs which will assist in developing person-centered plans for the individuals. Additionally, enhanced education and training requirements (of providers) will improve provider competency and continuity of care resulting in positive supports for participants that are important to and for the participants.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation which will conform to the content of the authorizing statutes by implementing a new version of the SCL waiver program which has been approved by the Centers for Medicare and Medicaid Services (CMS.)

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation which will assist in the effective administration of the authorizing statutes by implementing a new version of the SCL waiver program which has been approved by the Centers for Medicare and Medicaid Services (CMS.)

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers and recipients of SCL waiver services will be affected by the amendment. Currently, there are 202 SCL waiver service providers and as of July 1, 2012 there were 3,569 individuals receiving services via the SCL waiver 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. SCL waiver service providers will have to comply with provider requirements including that staff meet the required education and training requirements, that services are delivered in the manner required and protecting SCL waiver participants' healthy, safety and welfare.

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

tion (3). No cost is imposed on providers. Entities becoming providers for the first time may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation offers individualized, community based-services to divert individuals who have an intellectual disability and otherwise need institutional services (from an intermediate care facility for individuals with an intellectual disability or development disability – ICF/ID) and to support individuals who transition from an ICF/ID to the community. The services are designed to ensure that individuals are safe in their communities and are afforded choices, to create a positive culture that promotes person-centered thinking.

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

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the 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. Neither an increase in fees nor funding is necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities and individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the

state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(New Administrative Regulation)

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010 rather than the program established pursuant to 907 KAR 1:145. Providers who provide SCL waiver services to individuals pursuant to 907 KAR 1:145 shall continue to be reimbursed pursuant to 907 KAR 1:155. The SCL waiver program is federally authorized via a 1915(c) home and community based waiver which enables individuals with an intellectual or developmental disability to reside and receive services in a community setting rather than in an intermediate care facility for individuals with an intellectual or developmental disability.

Section 1. Definitions. (1) "Allocation" means the dollar amount designated to meet a participant's identified needs.

(2) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

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

(4) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(5) "Exceptional support" means a service:

(a) Requested by a participant and the participant's team; and

(b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:

1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and

2. Meet the assessed needs of the participant.

(6) "Exceptional supports protocol" means the set of rules that establish how DBHDID:

(a) Reviews an exceptional support request;
(b) Approves an exceptional support request;
(c) Revises a limit related to an exceptional support request;
(d) Sets a standard related to an exceptional support request.

(7) "Immediate family member" is defined by KRS 205.8451(3).

(8) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;
b. Self-care;
c. Home living;
d. Social or interpersonal skills;
e. Use of community resources;
f. Self-direction;
g. Functional academic skills;
h. Work;
i. Leisure; or
j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(c) Which is demonstrated before an individual reaches eighteen (18) years of age.

(9) "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A parent (biological, adoptive, or foster) of a minor child who provides care to the child;

(b) The guardian of a minor child who provides care to the child; or

(c) A spouse of a participant.

(10) "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual or a developmental disability as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person centered plan of care.

(11) "Participant directed service" means an option to receive a service which is based on the principles of self-determination and person-center thinking.

(12) "POC" means Plan of care.

(13) "State plan" is defined by 42 C.F.R. 430.10.

(14) "Supports for community living services" or "SCL services" means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.

(2) In order to be reimbursable by the department, a service shall be:

(a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and

(b) Prior authorized by the department.

Section 3. SCL Reimbursement and Limits. (1) Except as established in Section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant:

(a) The amount of the charge billed by the provider; and

(b) Not to exceed the fixed upper payment rate limit for the service.

(2) The upper payment limits listed in the following table shall be the upper payment limits for the corresponding services listed in the following table:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	\$320.00
Community Access-Individual	15 minutes	\$8.00

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Community Access-Group	15 minutes	\$4.00
Community Guide	15 minutes	\$8.00
Consultative, Clinical and Therapeutic	15 minutes	\$22.50
Day Training	15 minutes	\$2.20
Day Training (Licensed Adult Day Health Center)	15 minutes	\$3.00
Occupational therapy by occupational therapist	15 minutes	\$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	\$16.63
Physical therapy by physical therapist	15 minutes	\$22.17
Physical therapy by physical therapy assistant	15 minutes	\$16.63
Person Centered Coach	15 minutes	\$5.75
Personal Assistance	15 minutes	\$5.54
Positive Behavior Support	1 positive behavior support plan	\$665.00
Residential Level I - (4 to 8 residents)	24 hours	\$130.35
Residential Level I – (3 or less residents)	24 hours	\$172.46
Residential Level I - Technology Assisted	24 hours	\$79.00
Residential Level II -12 or more hours of supervision	24 hours	\$141.69
Residential Level II- fewer than 12 hours of supervision	24 hours	\$79.00
Respite	15 minutes	\$2.77
Speech therapy	15 minutes	\$22.17
Supported Employment	15 minutes	\$10.25

(3) Any combination of a day training service, a community access service, personal assistance, supported employment, and a participant's hours of employment shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized POC period.

(6) Community transition shall be based on prior authorized cost not to exceed \$2,000 per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized POC period.

(8) Day training and supported employment alone or in combination shall not exceed 160 units per week.

(9) Environmental accessibility shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an \$8,000 lifetime maximum.

(10) Goods and services shall not exceed \$1800 per one (1) year authorized POC period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed \$1,000 per one (1) year authorized POC period.

(12) Person centered coaching shall not exceed 1,320 units per year.

(13) Physical therapy and physical therapy by physical therapy assistant shall in combination not exceed fifty-two (52) units per month.

(14) Occupational therapy and occupational therapy by occupational therapy assistant shall in combination not exceed fifty-two (52) units per month.

(15) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized POC period.

(16) Shared living shall be based on a prior authorized amount not to exceed \$600 per month.

(17) Speech therapy shall not exceed fifty-two (52) units per month.

(18) A vehicle adaptation shall be limited to \$6,000 per five (5) years per participant.

(19) Transportation:

(a) Provided as a participant directed service, shall be reimbursed:

1. Based on the mileage; and

2. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), when provided by an individual. The rate shall be adjusted quarterly in accordance with 201 KAR 2:006, Section 8(2)(d); or

(b) Provided by a public transportation service provider shall be reimbursed at the cost per trip as documented by the receipt for the specific trip.

(c) Reimbursement shall be limited to \$265 per calendar month.

(20) An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(21) Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid Program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(22) A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full POC year;

(c) If qualifying as an exceptional supported in accordance with the Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)(a) The following shall qualify as an exceptional support and to be reimbursed at a rate higher than the upper payment limit established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Community access services;

2. Day training that is not provided in an adult day health care center;

3. Personal assistance;

4. Respite;

5. Residential Level I – three (3) residents;

6. Residential Level I - four (4) to eight (8) residents; or

7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

1. Be based on the actual cost of providing the service; and

2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(3) The following shall qualify as an exceptional support and to be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Consultative clinical and therapeutic services;

2. Person centered coaching;

3. Personal assistance; or

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4. Respite.

(4)(a) A service that qualifies as an exceptional support shall:

1. Be authorized to be reimbursed at a rate higher than the upper payment limit established for the service in Section 3 of this administrative regulation; or

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

(b) Not be authorized to be reimbursed at a higher rate than the upper payment limit and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5. Allocation. (1) A participant shall be designated an allocated amount of funding to cover SCL waiver expenses for the participant's POC period based on assessment of the participant's needs performed by DBHDID.

Section 6. Participant Directed Services. (1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the upper payment limit established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 3(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participated directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 7. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.

Section 8. Appeal Rights. A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Incorporation by Reference. (1) The "Exceptional Supports Protocol", July 2012 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012 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 September 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 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: Karen Martin (502) 564-7540, Claudia Johnson (502) 564-7702, Sheila Davis (502) 564-5560 or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for the Medicaid Supports for Community Living (SCL) waiver program. The SCL program enables individuals with an intellectual or developmental disability to live, and receive services, in a community rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the Medicaid SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation which implements reimbursement for a new version of the Medicaid SCL waiver program. The service and coverage policies for the new SCL waiver program are established in 907 KAR 12:010. All services in the current SCL waiver program will be available in some form in the new SCL waiver program though some have been renamed or merged with one or more services. Consequently, the reimbursement in this administrative regulation corresponds to the modified services. 907 KAR 1:155 continues the reimbursement policies for the current version of the SCL waiver program and 907 KAR 1:145 contains the service and coverage policies for the existing SCL waiver program.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation necessary to establish reimbursement rates for a new version of the Medicaid SCL waiver program.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation which conforms to the content of the authorizing statutes by establishing reimbursement which corresponds to services established in a new version of the SCL waiver program.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation which will assist in the effective administration of the authorizing statutes by establishing reimbursement which corresponds to services established in a new version of the SCL waiver program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers of SCL services will be affected by the amendment. Currently, there are 202 number of such providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. SCL providers will have to provide services in accordance with the corresponding service and coverage policy regulation – 907 KAR 12:010 – in order to be reimbursed for providing the services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is anticipated.

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(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). SCL providers who provide services in accordance with (907 KAR 12:010 – the new version of the SCL waiver program) will be able to be reimbursed for providing the services.

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

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the 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. Neither an increase in fees nor funding is necessary to implement the amendment.

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 14, 2012

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 14, 2012, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator David Givens, Committee Member, called the meeting to order, the roll call was taken. The minutes of the July 2012 meeting were approved.

Present were:

Members: Senators David Givens, and Joey Pendleton, and Representatives Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Michael Carr, Gary Stephens, Education Professional Standards Board; Richard Dobson, DeVon Hankins, Ricky Haven, Doug Hendrix, Department of Revenue; Michael Burleson, Board of Pharmacy; Becky Klusch, Scott D. Majors, Board of Physical Therapy; Larry Disney, Jim Grawe, Real Estate Appraisers Board; Clint Quarles, Department of Agriculture; Mona Juett, Leigh Powers, Elaine Walker, Department of Parks; Michael Haines, Steve Hoffman, Department for Natural Resources; Amy Barker, Amber Arnett, Department of Corrections; Morgan Sprague, Heather Wagers; Kentucky State Police; Dawn Bellis, Libby Simpson, Department of Housing, Buildings and Construction; Elizabeth Fiehler and Phyllis Sosa, Department for Aging and Independent Living.

The Administrative Regulation Review Subcommittee met on Tuesday, August 14, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

Subcommittee staff opened the meeting by explaining that neither of the committee co-chairs could be present at today's meeting because of scheduling conflicts. Since it was Senator Bowen's turn to chair the meeting, he had asked Senator Givens to serve as the temporary chair for this meeting. Representative Bell had been consulted as a part of that process and had agreed to the selection of Senator Givens as the temporary chair. Senator Givens assumed the chair.

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

16 KAR 2:120. Emergency certification and out-of-field teaching. Michael Carr, director of certification, and Gary A. Stephens, staff attorney, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to require an applicant for an emergency certificate for substitute teaching to complete the Form TC-4 using the EPSB On-line TC-4 Application System in accordance with the implementation guide incorporated by reference; and (3) to amend Section 5 to incorporate by reference the required Form TC-4. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Sales and Use Tax; Administration and Accounting

103 KAR 31:170 & E. Disaster area relief sales and use tax refunds. Richard Dobson, executive director, Office of Sales and Excise Taxes, and Ricky Haven, division director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 1 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 and 3 and two (2) forms incorporated by reference to comply with the drafting and formatting re-

quirements of KRS Chapter 13A; and (4) to amend Section 4 to change the edition date of the two (2) forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:340. Special pharmacy permit for clinical practice. Michael Burleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add KRS 315.035; and (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. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant. Becky Klusch, retiring executive director, and Scott D. Majors, presumptive executive director, represented the board.

Ms. Klusch announced her retirement from the board and introduced Mr. Majors as the presumptive executive director. Acting Chair, Senator Givens thanked Ms. Klusch for her years of service.

201 KAR 22:045. Continued competency requirements and procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure. Jim Grawe, assistant attorney general, and Larry Disney, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 2 to make a technical correction and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:125. Continuing education for appraisers.

201 KAR 30:180. Distance education standards.

A motion was made and seconded to approve the following amendment: to amend Section 3 to correct the name of the referenced agency. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 30:190. Educational requirements for certification.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, and 6 to correct internal cross-references. Without objection, and with agreement of the agency, the amendments were approved.

Department of Agriculture: Division of Regulation and Inspection: Amusement Rides

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction. Clint Quarles, staff attorney, represented the division.

TOURISM, ARTS AND HERITAGE CABINET: Department of Parks: Parks and Campgrounds

304 KAR 1:040. Campgrounds. Mona Juett, legislative liaison; Leigh Powers, general counsel; and Elaine Walker, executive director, represented the department.

In response to a question by Acting Chair Senator Givens, Ms. Powers stated that the department had problems in the past with golf carts blocking access areas. Ms. Walker stated that this administrative regulation allowed golf carts in some areas where they were previously prohibited. Ms. Powers stated that all-terrain vehicles were also now allowed in some areas where they were previously prohibited. Parking sanctions were also established in this administrative regulation.

In response to a question by Representative Ford, Ms. Powers stated that this administrative regulation expanded the areas allowed for use by campers using golf carts, all-terrain vehicles, and similar vehicles.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2(1) to clarify that if a permit is revoked for a violation of this administrative regulation, the permit fee shall be nonrefundable. Without objection, and with agreement of the agency, the amendments were approved.

304 KAR 1:080. Kentucky Proud™ Promotion Program.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the STATUTORY AUTHORITY paragraph, and 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.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 10:011E. Repeal of 405 KAR 10:010 and 405 KAR 10:020. Michael Haines, general counsel, and Steve Hohmann, commissioner, represented the division.

In response to questions by Acting Chair Senator Givens, Mr. Hohmann stated that the federal Office of Surface Mining (OSM) required adequate reclamation bonding. OSM recently noted that Kentucky's bonding system was inadequate and therefore deficient. The division established a work group that included industry representatives to develop adequate bonding requirements. The bonding amounts in these administrative regulations were those developed by the work group. OSM initially rejected these amounts; however, OSM viewed these amounts more favorably after an agreement that the division would support legislation during the 2013 Regular Session of the General Assembly to establish a statutory back-up bonding pool. If Kentucky did not make these changes, OSM may revert administration of this program back to the federal level, which would result in the loss of the abandoned mine program and a ten (10) to twenty (20) percent increase in bonding requirements. Industry representatives participated in the work group and did not actively support the changes but understood the necessity of the changes.

In response to a question by Representative Ford, Mr. Hohmann stated that OSM initially rejected the bonding amounts established in these administrative regulations, but viewed the amounts more favorably after an agreement that the division would support legislation during the 2013 Regular Session of the General Assembly to establish a statutory back-up bonding pool. Other surrounding states used this same, two (2) pronged approach to reinforce bonding adequacy. The abandoned mine program received approximately forty-eight (48) million dollars from the federal government each year. The abandoned mine program was different from the reclamation bond issues established in these administrative regulations; however, a consequence of not providing for adequate bonding in these administrative regulations was the potential loss of the abandoned mine program and its accompanying yearly federal appropriation.

In response to questions by Representative Lee, Mr. Hohmann stated that the amount for the abandoned mine program was determined by OSM based on current coal production levels in Kentucky and a national formula. The total appropriation changed each year. The appropriation amount was determined by OSM at the beginning of each fiscal year and OSM issued a distribution chart

each year around November. OSM monitored how the funds were spent.

405 KAR 10:015 & E. General bonding provisions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to delete a repealed statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 8 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 10:030. General requirements for liability insurance.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a repealed statutory citation; and (2) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and 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.

Performance Standards for Surface Mining Activities

405 KAR 16:020. Contemporaneous reclamation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a repealed statutory citation; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex. Amy Barker, assistant general counsel, and Amber Arnett, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:140. Bell County Forestry Camp.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky State Police: Driver Training

502 KAR 10:120 & E. Hazardous materials endorsement requirements. Morgain M. Sprague, counsel, and Heather Wagers, counsel, represented the KSP.

In response to a question by Acting Chair Senator Givens, Ms. Sprague stated that a CDL instructor had a traditional CDL license; however, the instructor also had a CDL certification. There was a circular problem with this administrative regulation that the revision was intended to correct. Subcommittee staff stated that there was a difference between "instruction permit" and "instructor permit," which may have added to confusion about the requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to update citations; (2) to amend Sections 1 and 3 to update agency names; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:020. Parts or materials list. Dawn M. Bellis, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:191. Minimum fixture requirements.

Division of Building Codes Enforcement: Electrical

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060. Dawn M. Bellis, general counsel, and Libby Simpson, electrical licensing supervisor, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 8 and three (3) forms incorporated by reference to: (a) require that the applicant provide the last six (6) digits of the social security number, rather than the entire number; and (b) require an applicant or licensee to provide a verified criminal background check conducted by the Department of Kentucky State Police within sixty (60) days of an initial or renewal application; and (2) to amend Section 10 to change the edition date of the three (3) forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:190. Nutrition program for older persons. Elizabeth Fiehler, dietician, and Phyllis Sosa, assistant director, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, 6, and 9 to 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.

Other Business: Memorial arrangements were announced and a moment of silence held for Mike Haydon, the Governor's Chief of Staff.

The following administrative regulations were deferred to the September 11, 2012, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:400 & E. Federal taxation limitation year.

105 KAR 1:420. 401(h) account established under 26 USC 401(h).

105 KAR 1:430. General compliance with federal tax laws.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:001. Definitions for 201 KAR Chapter 22.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Board of Emergency Medical Services: Board

202 KAR 7:601. Training, education, and continuing education.

The Subcommittee adjourned at 1:45 p.m. until September 11, 2012.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of July 12, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of July 12, 2012, having been referred to the Committee on July 4, 2012, pursuant to KRS 13A.290(6):

301 KAR 1:410
301 KAR 2:049
301 KAR 2:081
301 KAR 2:082
301 KAR2:084

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 12, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of August 2, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of August 2, 2012, having been referred to the Committee on August 1, 2012, pursuant to KRS 13A.290(6):

301 KAR 2:041
301 KAR 2:300
301 KAR 3:022

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:

301 KAR 3:022

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 August 2, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

C - 2

The Locator Index lists all administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky* from July 2012 through June 2013. 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 38 are those administrative regulations that were originally published in VOLUME 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2012 *Kentucky Administrative Regulations Service* was published.

KRS Index

C - 7

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 39 of the *Administrative Register of Kentucky*.

Technical Amendment Index

C - 12

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. 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 of Kentucky*.

Subject Index

C - 13

The Subject Index is a general index of administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
VOLUME 38					
The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in Volume 38 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2012 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			AmComments	1974	(See 39 Ky.R.)
* Statement of Consideration not filed by deadline			301 KAR 2:041		
** Withdrawn, not in effect within 1 year of publication			Amended	1879	(See 39 Ky.R.)
*** Withdrawn before being printed in Register			301 KAR 2:049		
**** Emergency expired after 180 days			Amended	1883	(See 39 Ky.R.)
(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.			301 KAR 2:081		
			Amended	1887	(See 39 Ky.R.)
			301 KAR 2:082		
			Amended	1893	(See 39 Ky.R.)
			301 KAR 2:084		
			Amended	1898	(See 39 Ky.R.)
			301 KAR 2:300		
			Amended	1899	(See 39 Ky.R.)
			301 KAR 3:022		
			Amended	1903	(See 39 Ky.R.)
			301 KAR 2:251		
			Amended	1661	
			As Amended	1948	6-7-12
103 KAR 31:170E	1934	5-11-12	304 KAR 1:040		
405 KAR 10:011E(r)	1935	5-4-12	Amended	2002	(See 39 Ky.R.)
405 KAR 10:015E	1937	5-4-12	304 KAR 1:080	2110	(See 39 Ky.R.)
921 KAR 2:015E	1429	12-29-11	304 KAR 1:410	1974	
Replaced	1969	6-20-12	405 KAR 10:015	2111	(See 39 Ky.R.)
			405 KAR 10:030		
			Amended	2004	(See 39 Ky.R.)
ORDINARY ADMINISTRATIVE REGULATIONS:			405 KAR 16:020		
11 KAR 3:100			Amended	2007	(See 39 Ky.R.)
Amended	1977	(See 39 Ky.R.)	501 KAR 6:020		
101 KAR 2:102			Amended	1905	(See 39 Ky.R.)
Amended	1171	7-6-12	501 KAR 6:050		
101 KAR 2:140			Amended	2011	(See 39 Ky.R.)
Amended	1176		501 KAR 6:090		
As Amended	1944	7-6-12	Repealed	1808	7-6-12
101 KAR 3:015			501 KAR 6:091(r)	1808	7-6-12
Amended	1178	7-6-12	501 KAR 6:110		
103 KAR 8:010			Amended	2013	
Amended	73		501 KAR 6:200		
As Amended	1297		Amended	1791	
103 KAR 31:170	2107	(See 39 Ky.R.)	As Amended	1951	7-6-12
106 KAR 2:030	2108	(See 39 Ky.R.)	501 KAR 6:240		
201 KAR 8:562			Amended	1793	
Amended	1870	(See 39 Ky.R.)	As Amended	1953	7-6-12
201 KAR 13:040			501 KAR 6:260	1916	(See 39 Ky.R.)
Amended	1875	(See 39 Ky.R.)	501 KAR 6:280	1918	(See 39 Ky.R.)
201 KAR 18:220			503 KAR 1:110		
Amended	1991		Amended	1795	
201 KAR 20:450			As Amended	1953	7-6-12
Amended	1994	(See 39 Ky.R.)	503 KAR 3:070		
201 KAR 20:490			Amended	1665	
Amended	1764		As Amended	1956	7-6-12
As Amended	1945	6-20-12	601 KAR 1:018		
201 KAR 20:510			Amended	1487	
Amended	1997		As Amended	1957	7-6-12
201 KAR 23:015			601 KAR 1:019	1399	
Amended	1767		As Amended	1962	7-6-12
As Amended	1947	6-20-12	702 KAR 1:160		
201 KAR 30:050			Amended	1799	(See 39 Ky.R.)
Amended	1768		703 KAR 5:002(r)	1401	(See 39 Ky.R.)
As Amended	1947	7-6-12	703 KAR 5:070		
201 KAR 32:035			Amended	1907	(See 39 Ky.R.)
Amended	1877	(See 39 Ky.R.)	703 KAR 5:140		
202 KAR 7:601			Amended	1391	(See 39 Ky.R.)
Amended	1770	(See 39 Ky.R.)	703 KAR 5:220	707	
301 KAR 1:201			703 KAR 5:225	1919	(See 39 Ky.R.)
Amended	1783	6-7-12	703 KAR 5:240	1407	(See 39 Ky.R.)
301 KAR 1:410			704 KAR 3:340		
Amended	1788				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
Amended	1909	(See 39 Ky.R.)	Amended	2068	(See 39 Ky.R.)
704 KAR 5:070	1410	(See 39 Ky.R.)	811 KAR 1:093	2118	
803 KAR 2:300			811 KAR 1:095		
Amended	2016		Amended	2077	(See 39 Ky.R.)
803 KAR 2:307			811 KAR 2:093	2119	
Amended	2018		811 KAR 2:096		
803 KAR 2:309			Amended	2084	(See 39 Ky.R.)
Amended	2021		811 KAR 2:100		
803 KAR 2:313			Amended	2093	(See 39 Ky.R.)
Amended	2023	(See 39 Ky.R.)	815 KAR 6:010		
803 KAR 2:316			Amended	1498	
Amended	2025		Amended	1866	
803 KAR 2:317			As Amended	1966	7-6-12
Amended	2027		815 KAR 6:070	1521	
803 KAR 2:319			As Amended	1968	
Amended	2029		Withdrawn		6-8-12
803 KAR 2:320			815 KAR 20:100		
Amended	2031	(See 39 Ky.R.)	Amended	2099	
803 KAR 2:403			900 KAR 7:030		
Amended	2037		Amended	2102	
803 KAR 2:405			900 KAR 9:010	2121	
Amended	2040	(See 39 Ky.R.)	921 KAR 2:015		
803 KAR 2:407			Amended	1501	
Amended	2042	(See 39 Ky.R.)	As Amended	1969	6-20-12
803 KAR 2:425			921 KAR 3:035		
Amended	2044	(See 39 Ky.R.)	Amended	1804	6-20-12
803 KAR 2:500					
Amended	2046				
804 KAR 4:370					
Amended	2049				
806 KAR 3:190					
Amended	1910	(See 39 Ky.R.)			
810 KAR 1:018					
Amended	2052	(See 39 Ky.R.)			
810 KAR 1:028					
Amended	2061	(See 39 Ky.R.)			
810 KAR 1:040	2116				
811 KAR 1:090					

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

VOLUME 39

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.)

105 KAR 1:400E	4	5-30-12
201 KAR 2:020E	378	7-20-12
201 KAR 2:030E	379	7-20-12
201 KAR 2:050E	381	7-20-12
201 KAR 2:061E	383	7-20-12
201 KAR 2:205E	385	7-20-12
201 KAR 2:350E	386	7-20-12
201 KAR 5:010	388	7-20-12
201 KAR 5:030	390	7-20-12
201 KAR 5:130	392	7-20-12
201 KAR 8:532	394	7-20-12
201 KAR 8:540	398	7-25-12
201 KAR 9:001	401	7-20-12
201 KAR 9:081	402	7-20-12
201 KAR 9:200	406	7-20-12
201 KAR 9:210	408	7-20-12
201 KAR 9:220	409	7-20-12
201 KAR 9:230	410	7-20-12
201 KAR 9:240	411	7-20-12
201 KAR 9:250	414	7-20-12
201 KAR 9:260	418	7-20-12
201 KAR 9:310	423	7-20-12

201 KAR 20:056	426	7-20-12
201 KAR 20:057	429	7-20-12
201 KAR 20:161	431	7-20-12
201 KAR 20:215	434	7-20-12
201 KAR 25:011	436	7-20-12
201 KAR 25:021	438	7-20-12
201 KAR 25:031	439	7-20-12
201 KAR 25:051	441	7-20-12
201 KAR 25:090	444	7-20-12
902 KAR 20:420	446	7-20-12
902 KAR 55:110	452	7-20-12
502 KAR 10:120E	8	5-31-12
906 KAR 1:160E	182	7-13-12
907 KAR 14:005E	184	6-22-12

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		(See 38 Ky.R.)
As Amended	187	
16 KAR 2:120		
Amended	66	
As Amended	456	
16 KAR 3:010		
Amended	497	
16 KAR 6:030		
Amended	499	
40 KAR 2:330	350	
103 KAR 31:170		(See 38 Ky.R.)
As Amended	458	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
105 KAR 1:400			Amended	77	
Amended	68		201 KAR 22:045		
105 KAR 1:420			Amended	79	
Amended	72		As Amended	459	
105 KAR 1:430			201 KAR 22:053		
Amended	74		Amended	81	
106 KAR 2:030		(See 38 Ky.R.)	Withdrawn		8-16-12
As Amended	199		201 KAR 25:011		
201 KAR 2:020			Amended	543	
Amended	501		201 KAR 25:021		
201 KAR 2:030			Amended	545	
Amended	502		201 KAR 25:031		
201 KAR 2:050			Amended	546	
Amended	504		201 KAR 25:051		
201 KAR 2:061			Amended	548	
Amended	506		201 KAR 25:090	676	
201 KAR 2:205			201 KAR 30:030		
Amended	508		Amended	83	
201 KAR 2:340	172		As Amended	460	
As Amended	458		201 KAR 30:125		
201 KAR 2:350	655		Amended	86	
201 KAR 5:010			201 KAR 30:180		
Amended	509		Amended	87	
201 KAR 5:030			As Amended	461	
Amended	511		201 KAR 30:190		
201 KAR 5:130	656		Amended	90	
201 KAR 8:520			As Amended	463	
Amended	512		201 KAR 32:035		(See 38 Ky.R.)
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. 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 of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

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